

“IT IS A MERIT TO ESCAPE”:  
DEFENDING DESERTION AND DEFINING BORDERS ON THE U.S.-  
CANADIAN FRONTIER, 1784-1860

by  
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## **Abstract**

This work is a study of army desertion in the British North American borderland. It explores how Americans, Canadians, and Britons thought about and responded to deserters, while also recovering the voices and strategies of deserters themselves. The ongoing movement of fleeing soldiers across the border – which carried on in both directions, though the majority fled from Canada into the United States – generated conversation, cooperation, and conflict on multiple levels: personal, diplomatic and legal, local, martial, and popular. My research analyzes the ways that cross-border deserters expressed the personal meaning of their experiences and engaged with their communities regarding the moral and patriotic implications of their actions. It explores diplomatic and judicial decisions about extradition that drew strategic and legal connections between fugitive slaves and army deserters. It establishes the methods that borderland civil and military officers used to handle the pursuit and exchange of deserters in the absence of adequate law, and shows the effect their actions had in shaping the border's meaning. It quantitatively examines the patterns of arrest and surrender among deserters who faced general courts martial, and reveals significant civilian involvement in policing the borderland armies. It reviews the defense strategies that accused deserters practiced at their courts martial and evaluates their success in ameliorating their punishments. Finally, it surveys the era's rich variety of desertion romances, tragedies, and melodramas, attending to the gendered implications of fictional women's roles as intercessors, victims, and patriots. It observes the mixture of anti-war critique alongside light entertainment, and interrogates the significance that sympathetic, imagined portrayals of deserters held in a popular culture that hailed martial glory as a central aspect of nationalism.

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## **Introduction**

Dr. John Jeremiah Bigsby was ambling with a friend along the Canadian bank of the Niagara River one afternoon in 1822 when a British army deserter suddenly burst out of the shrubbery, cut across the bank, leaped into a small unattended skiff at the waterline and began paddling for the American shore with the aid of a long wood plank that he had likely stolen from his barracks at Queenston. Bigsby and his companion were captivated by this adventurous escape attempt and decided to sit on the bank and watch it unfold. As the deserter made progress across the river, the spectators looked around to see if he would be pursued, and soon “saw, with beating hearts, some distance up the river, a boat with four soldiers rowing and a serjeant steering, in full rush, to intercept the runaway.” Bigsby’s heart was beating, not in excited anticipation of the soldier’s capture, but rather in fear of it. He confessed that the image of the triangular flogging posts traditionally used to punish deserters forcefully intruded itself into his imagination. This vision of “the regimental triangles, clotted with gore, came before my eyes, and I earnestly wished the man to escape.”

Bigsby was an Englishman who served in Canada as an army surgeon and also acted as a secretary on the international boundary commission tasked with surveying the borderline that this deserter was crossing; yet a sense of humanitarianism and horror at corporal punishment led him to root for the deserter to succeed. He closely observed the deserter’s actions and gestures, seeming to recognize in him an admirable intrepidity. The man “instantly saw his danger” as the pursuing sergeant drew in sight, but instead of quailing or surrendering he “dashed his cap on the floor [of the boat]...and coolly, but most stoutly, wrought with his board” to keep ahead of his pursuers. The chase took only five minutes and concluded when the deserter scrambled onto the New York shore and disappeared into the undergrowth just a hair’s breadth ahead of the

sergeant's rowboat. The British soldiers did not try to continue the chase on American land. Although pleased by the outcome, Bigsby felt emotionally unsettled by the event. "My heart was in my mouth all the time," he remembered, "and I was upset for the evening." A British deserter's flight across the border had touched a chord of immediate and passionate sympathy in his countryman.

When Bigsby, nearly three decades later, sat down in his house in London to write and eventually publish his reminiscences of his travels in Canada, he penned the story of this emotional incident, but supplemented it with broader and more critical comments on the problem of cross-border army desertion from Canada to the United States. The moral ambiguity he felt about the issue led him to at once condemn the act of desertion as shameful and yet also excuse it as a natural outgrowth of common soldiers' self-interest. "Desertion along the whole Canadian frontier is frequent: it is a most dishonourable act; and yet there are strong inducements to be guilty of it," he wrote. Chief among the inducements for these men to desert were the unpleasant conditions they faced in their daily lives as low ranking soldiers. Bigsby characterized British army life as miserable, a claim that carried strong resonance with British and North American readers whose shared political culture had long denounced standing armies as bastions of oppression and anti-republican values. Bigsby also touched on the specter of harsh punishment that might be administered tyrannically. "Common soldiers often become thoroughly disgusted with their monotonous, hopeless, and often annoying mode of life. Among no class of men is suicide so frequent...A soldier in debt, or in fear of punishment, sometimes unjustly (for tyranny exists everywhere), rows over the narrow water-line" in order to escape his harsh condition. Once across the border, he "secures, he expects, not only liberty, but welcome, and eventually, if

industrious, the possession of land, with the sweets of a domestic circle of his own. With such temptations, what wonder if an English peasant soldier often disloyally crosses the border?”<sup>1</sup>

In that short but dense passage, Bigsby evoked the republican ideal of the independent possession of a farm and family in contrast to the landless drudgery and perpetual bachelorhood that many private soldiers had to expect if they served out their full term of enlistment. In the British army of this era, soldiers were required to enlist either for life, or for terms of seven, twelve, or fourteen years, any of which might claim a young man’s most productive time of life. Bigsby used the term “peasant” – anachronistic by the mid-nineteenth century in England – to emphasize his image of deserters as rustic, poor, and simple in their ambition to secure their own subsistence. Bigsby asked how his presumably middle- to upper- class readers could find it surprising that such men cared little for the strict claims of martial honor and national loyalty. To behave otherwise, he implicitly suggested, would require men of higher class and character.<sup>2</sup>

However, having taken a condescending but indulgent view toward British soldiers who deserted to find bounty in America, Bigsby then exposed their expectations as false. He argued that these men did not actually exchange British army privations for American domestic advantages, but instead merely exchanged bad army life in Canada for worse army life in America. For “practically, nine out of ten deserters,” he claimed, “are driven by want into the

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<sup>1</sup> John Jeremiah Bigsby, *The shoe and canoe: or pictures of travel in the Canadas; with facts and opinions on emigration, state policy, and other points of public interest* (London: Chapman and Hall, 1850) vol. 2, 32-34. For a brief overview of the intellectual history behind the strands of Anglo-American republican ideology that vilified standing armies while glorifying citizen militias, see J.G.A. Pocock, *The Machiavellian Moment*. 2d paperback ed. (Princeton: Princeton University Press, 2003), 292-94, 406-422, 427-436, 535-537; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press of Harvard University Press, 1967), 61-63, 112-119; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988), 160-170.

<sup>2</sup> In practice, more wives accompanied their husbands in Canada than British regulations allowed, and some remained in Britain and sustained long-distance marriages. Ron W. Shaw, *First We Were Soldiers: The Long March to Perth* (Victoria, British Columbia: FriesenPress, 2015), chapters 7 and 8; Jennine Hurl-Eamon, *Marriage and the British Army in the Long Eighteenth Century: ‘The Girl I Left Behind Me’* (Oxford Scholarship Online, April 2014).

American army – a service in bad repute, most irksome in peace, and especially dangerous in war.” Since the conclusion of the Napoleonic wars the British army had been world-renowned for martial glory. The American regular army, by contrast, had garnered little glory even among its own people, who preferred to celebrate the attractive – and, as modern scholarship has shown, largely mythical – prowess of the citizen-soldiers of volunteer militias. It was in the uninspiring lists of American regular regiments, Bigsby claimed, that British deserters found their place in the United States. His evidence for this claim was impressionistic as he tried to read American soldiers’ histories through their ethnicities. “I was once present at the roll-call of a company of infantry at Sackett’s Harbour[, New York] on Lake Ontario, and every name was British or German – there was scarcely one American.” Given that the United States had a long history of immigration from both Britain and Germany and that its army recruited heavily from northeastern cities where newly-arrived immigrants were numerous, this observation was hardly surprising. Bigsby, however, imagined that every foreign name had first adorned the muster rolls of a British regiment. Some of them undoubtedly had.<sup>3</sup>

Bigsby’s assumption that British deserters could not help but fall back into military life reflected his poor opinion, not of America, but of army culture and the unindustrious men that its regime cultivated. Once the army had conditioned a man to its irregular habits, he was fit for nothing else. “The soldier has been so long provided for by others, that he usually has lost the faculty of self-maintenance and continuous labour.” The transition from oppressed private to independent landholder was not one that most soldiers proved capable of making, in Bigsby’s view. They had grown dependent, and were therefore willing to give up the goals of land,

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<sup>3</sup> Bigsby, *The shoe and canoe*, vol 2, 34.

liberty, and family. He believed that in America they simply returned to army rations and the restless, idle attractions of the frontier service.<sup>4</sup>

Bigsby's assessment of deserters along the U.S.-Canadian frontier, steeped as it was in the republican ideological tradition that celebrated independent agrarian life and vilified standing armies, combined deeply emotive personal sympathy with class prejudice and disdain. He saw a fleeing deserter as both brave and shameful, oppressed and lazy. He viewed these men as the victims, but also as the products, of the army, and they carried its vices with them even as they tried to escape. Evaluating cross-border desertion led him also to conclude that American prosperity was more often aspired to than achieved, adding an implicitly nationalistic strand to his analysis in his reminder that the promise of republican happiness in the United States proved false for many of those who left Canada. This ambiguous contemporary reaction to deserters' cross-border movement serves as a fitting introduction to many of the central themes this dissertation sets out to explore.

This work is a study both of desertion itself and of the ways that various groups in early America, Canada, and Britain thought about and responded to desertion, most particularly international desertion. The ongoing movement of fleeing soldiers across the border – which carried on in both directions, though the majority fled from Canada into the United States – generated conversation, cooperation, and conflict on multiple levels: personal, diplomatic and legal, local, martial, and popular. My research has pursued a series of questions about how the diverse groups that encountered the issue conceived of and handled borderland desertion. How

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<sup>4</sup> Bigsby, *The shoe and canoe*, vol 2, 34. Edmund S. Morgan observed the larger cultural trends that influenced attitudes like Bigsby's: "Popular hostility to a standing army [in late-18<sup>th</sup> century America] grew not only out of the danger it posed to republican government but also out of contempt for the persons who would subject themselves to the tyranny of military discipline. 'Can a friend to liberty,' asked one pamphleteer, 'entertain a tender regard for men, who without any motive but a dislike to labour, have relinquished voluntarily the blessings of freedom, for a state in which they are arbitrarily beaten like slaves?'" *Inventing the People*, 162, quoting Alexander Smyth, *The Third and Last Letter from Alexander Smyth to Francis Preston* (n.p. 1796), 15.

did cross-border deserters themselves express the personal meaning of their experiences and engage with their communities regarding the moral and patriotic implications of their actions? How did diplomatic and judicial officials approach international desertion as an extradition problem, and why were no treaty arrangements for mutual exchange ever made? How did borderland civil and military officers handle the pursuit and exchange of deserters in the absence of adequate legal arrangements, and what affect did their actions have in shaping the border's meaning? When accused deserters surrendered or faced arrest, what defense strategies did they practice at their courts martial and how successful were they in ameliorating their punishments? Finally, as deserters appeared in popular literature, theater, and song, what significance did their sympathetic, imagined portrayals hold in a culture that hailed martial glory as a central aspect of nationalism?

In answering these questions, I drew on the most qualitatively rich sources about U.S.-Canadian desertion that I could find, many of which proved to be little previously studied. These sources included the published memoirs of cross-border deserters, international diplomatic correspondence, legal cases, courts martial records, periodical literature, manuscript correspondence, newspapers and pamphlets, novels, and plays. The resources of the U.S. National Archives and Records Administration, the Library of Congress, the Library and Archives Canada, the British National Archives, and the databases maintained by America's Historical Newspapers, American Periodicals, and Early Canadian Periodicals proved particularly valuable in drawing together materials that illustrated multiple in-depth perspectives on desertion. Methodologically, I set certain limits on the kind of desertion I studied: my focus was on regular army deserters, not militiamen, marines, or sailors. Furthermore, I concentrated on peacetime desertion rather than desertion in response to war or other violent conflict.

Peacetime situations offered opportunities to observe the greatest range of nuanced, ambivalent responses to borderland desertion. During war between Great Britain and the United States, deserting across the border meant deserting “to the enemy.” Deserters who were accepted by an opposing army were expected to pay for their security by supplying information about the condition of the army they had just left. As a result, during wartime deserters were primarily viewed as informants and spies and their actions seemed to threaten the safety of their former comrades and the interests of their former nation much more directly than was the case in peacetime desertion. During periods of routine frontier service or peacekeeping actions, however, it became possible for deserters and their sympathizers to question or mitigate the criminality of their actions, and it also became incumbent on neighboring neutral powers to resolve the problems that desertion raised without overstepping their authority or endangering their good relations. These peacetime conditions transformed borderland desertion into a delicate international conundrum, and this dissertation focuses on the multifaceted ways that contemporary military and civil powers attempted and often failed to resolve it.<sup>5</sup>

Various factors designated regular army soldiers as historically distinct and central actors in the examination of peacetime cross-border desertion. Unlike militiamen for most of this time period, they remained on duty day in and day out during times of peace. Although by the 1840s and 1850s provincial corps raised in Canada did play an important role in garrisoning forts and

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<sup>5</sup> American and Canadian newspapers reflect wartime shifts in language that highlighted deserters’ roles as informants and spies who relayed their estimates of enemy armies’ numbers and movements. This type of desertion reporting was a routine part of wartime journalism. Examples of U.S. deserters’ information reports to the British during the wars with Native American confederacies in the early 1790s appear in Brigadier General E.A. Cruikshank, ed., *The correspondence of Lieut. Governor John Graves Simcoe: with allied documents relating to his administration of the government of Upper Canada* (Toronto: The Ontario Historical Society, 1923-31), 5 vols. American deserters’ information reports during the War of 1812 are preserved in the Library Archives Canada’s Record Group 8 series, especially volumes 128, 673, 677-685, and 687. Registers of British deserters who surrendered to the American army during the same war are available at the National Archives and Records Administration, “Registers of Men Discharged at Fort Erie, Champlain Station, Greenbush, Plattsburg, and Sackett’s Harbor, 1814 – 1815,” Record Group 98: Records of U.S. Army Commands, 1784 - ca. 1874, vol 556.

patrolling for deserters, the majority of British troops in Canada did not have strongly established local ties and would not have been leaving homes behind by crossing the border. Culturally, enlisted men were regarded more negatively than were citizen-soldiers, and militarily, their disciplinary regime and the punishments they faced for desertion were far harsher than those prescribed for militias. The opportunities, temptations and risks of international desertion were highest in their situation. I elected not to attempt to include maritime deserters in this dissertation, despite their obvious importance in Anglo-American relations during this time period, because borderland army desertion along the North American interior presented unique problems that were not always conceptually or strategically tied to the complex issues of maritime impressment and desertion. Army desertion along the border proved a rich enough subject to sustain independent scholarly focus, and it was useful to observe the moments in which developments in army desertion diverged from those of naval and merchant marine desertion as well as the moments in which strong connections operated between them.<sup>6</sup>

This dissertation contributes to a number of historiographical conversations. In military history, desertion remains an understudied subject. Many accounts of particular wars address desertion as a subtopic, but it is rarely treated at length or examined outside the bounds of wartime. Desertion during the American Civil War, particularly from the Confederate armies, has attracted scholarly attention, as has desertion during twentieth and twenty-first century wars. In America, Canada's image as a safe harbor for draft-dodgers and deserters was popularized

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<sup>6</sup> The leading current work on British naval impressment is Denver Brunsman, *The Evil Necessity: British Naval Impressment in the Eighteenth-century Atlantic World* (Charlottesville: University of Virginia Press, 2013). A forthcoming second volume promises to examine maritime impressment on the Great Lakes during the War of 1812. Regarding military punishments that regular army deserters faced, see Peter Burroughs, "Crime and punishment in the British Army, 1815-1870," *English Historical Review* (1985): 545-571; William Skelton, *An American profession of arms: The Army officer corps, 1784-1861* (Lawrence, KS: University Press of Kansas, 1992), ch. 14; Mark A. Vargas, "The Military Justice System and Illegal Punishments as a Cause of Desertion in the U.S. Army, 1821-1835," *The Journal of Military History*, Jan. 1991; 55(1):1-19.



through controversial conflicts in Vietnam and the Middle East. However, the border's role in shielding deserters – particularly America's role as a safe harbor for deserters from Canada – had a much longer and relatively little explored history.<sup>7</sup>

Canadian historians have sporadically examined the peacetime experiences of the British troops that manned their long frontier with the United States. In 1950 military historian C.P. Stacey called attention to the long borderland army history that still awaited scholarly analysis, challenging the “myth” of the undefended border. In the early 1960s he published the first major historical work about the British army in Canada, focusing on the last twenty-five years of the British army's presence, the reasons for its withdrawal, and its influence on Canadian government and national identity. In 1980 Peter Burroughs' excellent article provided a valuable overview of borderland British army desertion, and the following year Carol M. Whitfield devoted a chapter to desertion in her report for National Parks Canada on the social history of British soldiers in Canada. The National Parks Canada historians and archaeologists who were placed in charge of the remaining sites of the old French and British forts transformed many of them into centers of tourism and education. The pamphlets they produced about garrison life and related military topics were among the few scholarly explorations of over a century's worth of British army history in Canada, culminating in Andre Charbonneau's comprehensive monograph on the fortifications centered on Lake Champlain and the Richelieu River. In his book, *Safeguarding Canada*, J. Mackay Hitsman described the British army's disposition and defense policies over its entire chronological stay in Canada. George Sheppard's iconoclastic and

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<sup>7</sup> Mark A. Weitz, *A higher duty: desertion among Georgia troops during the Civil War* (Lincoln: University of Nebraska Press, 2000); Mark A. Weitz, *More Damning than Slaughter: Desertion in the Confederate Army* (Lincoln: University of Nebraska Press, 2005); Steven J. Ramold, *Baring the Iron Hand: Discipline in the Union Army* (DeKalb: Northern Illinois University Press, 2010); Charles Glass, *The Deserters: A Hidden History of World War II* (New York: Penguin, 2013); John Hagan, *Northern Passage: American Vietnam War Resisters in Canada* (Cambridge: Harvard University Press, 2001).

insightful social history of the War of 1812 in Upper Canada examined high rates of militia desertion and their place within the myth-making process of nation building, though he did not add desertion from the British regular army to his analysis.<sup>8</sup>

Among American military historians, Francis Paul Prucha and Edward M. Coffman wrote ground-breaking monographs that examined the peacetime service of soldiers and officers on the frontier, delving into the living and work conditions that placed their desertions in context. William Skelton and, most recently, Samuel J. Watson have vastly expanded our knowledge of the American army officer corps, civil-military relations, and the entwined roles of peacekeeping and conquest that shaped officers' increasingly professional ethos. These broadly researched studies are indispensable resources for understanding the army of early and antebellum America, and this dissertation builds on their foundation to pursue its more specialized inquiries. J.C.A. Stagg has contributed careful and detailed analyses of desertion in the Jeffersonian army and the War of 1812. Several dissertations, particularly the work of Joseph M. Schweninger and Dale Richard Steinhauer have quantitatively illuminated the details of the U.S. army's presence on the northern frontier and offered insight into U.S. patterns of desertion in the antebellum era.<sup>9</sup>

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<sup>8</sup> C.P. Stacey, "The Myth of the Unguarded Frontier 1815-1871," *The American Historical Review*, vol 56, no 1 (Oct 1950), 1-18; C.P. Stacey, *Canada and the British Army, 1846-1871: a study in the practice of responsible government* (Toronto: Published in association with the Royal Commonwealth Society by University of Toronto Press, 1963); Peter Burroughs, "Tackling Army Desertion in British North America." *Canadian Historical Review* 61.1 (1980): 28-68; Carol M. Whitfield, *Tommy Atkins: The British Soldier in Canada, 1759-1870* (National Historic Parks and Sites Branch, Parks Canada, 1981); Christian Rioux, "The British Garrison at Quebec, 1759-1871" (National Historic Sites, Parks Canada, Department of Canadian Heritage, 1996); André Charbonneau, *The Fortifications of Ile Aux Noix: A Portrait of the Defensive Strategy on the Upper Richelieu Border in the 18th and 19th Centuries* (Ottawa: National Historic Sites, Parks Canada, Canadian Heritage, 1994); J. Mackay Hitsman, *Safeguarding Canada, 1763-1871* (Toronto: University of Toronto Press, 1968); George Sheppard, *Plunder, Profit, and Paroles: A Social History of the War of 1812 in Upper Canada* (Montreal: McGill-Queen's University Press, 1994).

<sup>9</sup> Francis Paul Prucha, *Broadax & Bayonet: The Role of the United States Army in the Development of the Northwest, 1815-1860* (Madison, WI: State Historical Society of Wisconsin, 1953); Edward M. Coffman, *The Old Army: A Portrait of the American Army in Peacetime, 1784-1898* (New York: Oxford University Press, 1986); William Skelton, *An American Profession of Arms*; Samuel J. Watson, *Jackson's Sword: The Army Officer Corps on the American Frontier, 1810-1821* (Lawrence, KS: University Press of Kansas, 2012); Samuel J. Watson, *Peacekeepers and Conquerors: The Army Officer Corps on the American Frontier, 1821-1846* (Lawrence, KS: University Press of Kansas, 2013), with chapters 2,8, and 9 especially important for historians of the American

This dissertation builds on these works and incorporates expanded perspectives on the experiences of enlisted men. This group made up the vast majority of both the British and American armies, but because officers generated richer documentary archives, their perspectives have frequently predominated in historical analysis. Desertion sometimes prompted common soldiers to explain themselves at length and in mediums that recorded and preserved their claims, particularly in personal memoirs and courts martial records. Analysis of deserters' self-justifications and defensive strategies expands our understanding of enlisted men on both sides of the Canadian frontier. Furthermore, fresh attention to the pursuit and arrest of borderland deserters complicates our understanding of the American army's widely acknowledged role as a "frontier constabulary," detailing the extent to which local civilians formed a part of the army's own constabulary by policing errant soldiers for the sake of monetary rewards.<sup>10</sup>

The dissertation also offers new insights on the role that Canada, a peripheral frontier of the British Atlantic, could play in shaping broader British diplomacy and law. Historians of abolitionism have long noted the important role that comparisons between slaves and sailors played in political debates over the British slave trade, but comparisons between slaves and soldiers have attracted less scholarly attention. Nevertheless, diplomatic and judicial officials in Britain, Canada, and America repeatedly connected fugitive slaves with army deserters in their efforts to hammer out extradition arrangements along the Canadian border. These strategic

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Northwest and the Canadian borderlands; J.C.A. Stagg, "Enlisted Men in the United States Army, 1812-1815: A Preliminary Survey," *The William and Mary Quarterly*, vol 43, no 4 (Oct 1986) 615-645; J.C.A. Stagg, "Soldiers in Peace and War: Comparative Perspectives on the Recruitment of the United States Army, 1802-1815," *The William and Mary Quarterly*, vol 57, no 1 (Jan 2000) 79-120; J.C.A. Stagg, "J.C.A. Stagg, "Freedom and Subordination: Disciplinary Problems in the U.S. Army during the War of 1812," *The Journal of Military History*, vol 78, issue 2 (April 2014), 537-574; Joseph M. Schweninger, "'A Lingering War Must Be Prevented': The Defense of the Northern Frontier, 1812-1871," Ph.D. diss. (Ohio State University, 1998); Dale Richard Steinhauer, "'Sogers': Enlisted Men in the U.S. Army, 1815-1860," Ph.D. diss. (University of North Carolina at Chapel Hill, 1992).

<sup>10</sup> Francis Paul Prucha and Edward M. Coffman used the phrase "frontier constabulary" to define the role of the U.S. army in policing incoming settlers in developing American regions, including the Canadian borderlands.

connections contributed to an extradition stalemate that guaranteed continued protection to fugitive slaves, soldiers, and sailors of both nations.<sup>11</sup>

Furthermore, Lisa Ford and Lauren Benton's work on the imperial origins of international law argues that British colonial officials who were posted in the far corners of the empire – including Canada – played a leading role in expanding imperial power by making nuanced innovations in their interpretations of existing law in order to justify new extensions of authority. Attention to desertion controversies balances this narrative of frontier innovation by turning attention to instances in which borderland officials refused to extend their legal and diplomatic authority. Local civil and military officials along the Canadian border sometimes decided not to exchange runaway soldiers, despite their acknowledged desire for such arrangements and their awareness of their expediency. Many officials felt their hands were tied before the obstacles of their own civil or imperial law. They engaged in fruitless quests for authorization from higher imperial or federal authorities, expressing keen awareness of the precarious position they would face should quasi-legal arrangements encounter judicial challenge or diplomatic controversy. Desertion negotiations illustrate that borderland officials, wary of taking unsanctioned action, were instrumental in limiting the extension of power through the law in the British empire and in America.<sup>12</sup>

Despite its peacetime focus, this dissertation also engages with the work of leading scholars on the War of 1812 whose attention to the northern borderland has offered insights into the complex process of North American nation and empire building. In *The Civil War of 1812*,

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<sup>11</sup> The British Parliament debated whether African voyages represented the “nursery” in which British seamen developed or the “grave” in which they perished. James A. Rawley and Stephen D. Behrendt, *The Transatlantic Slave Trade: A History*, revised edition (Lincoln: University of Nebraska Press, 2005), 245-247; Marcus Rediker, *The Slave Ship: A Human History* (New York: Penguin, 2008).

<sup>12</sup> Lauren Benton and Lisa Ford. *Rage for Order: The British Empire and the Origins of International Law, 1800-1850* (Cambridge, MA: Harvard University Press, 2016), especially chapter 4.

Alan Taylor argued that the international U.S.-Canadian border, though created by the American Revolution, did not solidify into a permanent, socially meaningful dividing line until the hostilities of the War of 1812 and its aftermath weakened previously strong ties between Americans, Indians, and Irish and British migrants who settled on both sides of the line. Taylor showed that army deserters along the Canadian frontier, along with their naval counterparts, had an important role to play in this process. He examined several important cross-border army desertion cases, suggesting that, as international tensions worsened, “military cooperation” in exchanging deserters “dissolved along the border.” During the war, “rival commanders promoted the desertion of enemy soldiers... [and] the British and the Americans waged the War of 1812 in the hearts and minds of...soldiers and sailors on both sides.” For Americans, each British soldier who changed his allegiance and fled to America represented an ideological victory as well as a military asset, because one of the central ideological contests of the war was the question of whether a ‘natural-born’ subject could choose to leave his British sovereign and become the citizen of another nation.

In order to justify the practice of impressment, the British took the official position that anyone born under the British government could be recalled for imperial service at any time, regardless of whether he had voluntarily adopted citizenship in another nation. Americans therefore felt, Taylor explained, that when a deserter fled from the British army to the United States, he was “reenacting the [American] revolution on an individual scale.” Although the Treaty of Ghent ended the war in 1815, it did not resolve this citizenship controversy. However, Taylor argued that Americans belatedly won their point in a series of clashes on the Detroit frontier in 1816 as they determinedly refused to allow British officers to seize deserters from American ships or American land. At sea and on the Great Lakes, the British refrained from

further impressment attempts, and on land “the British had to desist from pursuing their deserters across the border.” Taylor counts desertion – and associated arguments over the rights of natural born subjects to change their national allegiance – as one of the issues that was largely resolved by the war. He suggests the newly-strengthened borderline was no longer open to cooperative or coercive British attempts to reclaim deserters in violation of American sovereignty.<sup>13</sup>

This dissertation argues that in cases of international desertion the War of 1812 did not transform the border’s meaning as decisively as Taylor suggested. The pre-war border proved strong enough to protect deserters from recapture in multiple cases, and though military officers did sometimes cooperate in exchanging runaways, at other times they insisted that they could not allow any deserters to be taken out of their nation’s territory. In the pre-war years British and American officers developed a mixture of strategies to recover deserters that included negotiating cooperative military agreements, pardoning deserters who voluntarily returned, and forcibly raiding across the border. After the War of 1812, these same methods continued to recur for decades. Also, although Taylor is correct that some Americans viewed British desertions as a means of scoring ideological points off of their British and Canadian rivals, and some deserters did present their actions as a reenactment of American revolutionary values, many American and Canadian observers regarded deserters with greater ambiguity. Their sympathy for deserters was often mixed with some degree of moral censure, and not all Americans felt vindicated by men who denied their native national allegiances. By highlighting the continuities of military practice and the nuances of public perceptions, this dissertation points toward a longer desertion history

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<sup>13</sup> Alan Taylor, *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels & Indian Allies* (New York: Alfred A. Knopf, 2010), especially chapters 4, 12, and 15, quotations from pp. 110 (cooperation dissolved), 4-5 (revolution on an individual scale, hearts and minds), 434 (British had to desist). In distinguishing between “borderlands” and “bordered lands,” I follow Jeremy Adelman and Stephen Aron, “From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History,” *The American Historical Review* 104.3 (1999): 814-841.

in which the ideological meanings attached to the border and to those who crossed it remained contested and imperfectly resolved.

Nicole Eustace, in her work *1812: War and the Passions of Patriotism*, has drawn attention to the multifarious ways that American wartime popular culture intertwined the language of romance and reproduction with ideals of war ardor and patriotism. Eustace argues that most Americans believed that men's heterosexual passions would be the basis of their battle courage and that freely chosen romantic love and democratic national liberty were mutually reinforcing elements of a distinctly American brand of virtue that could be used to morally justify conquest and war. Eustace notes that reality defied these propagandistic romanticisms, and even points out that heavy desertions among American troops were sometimes cast as acts of chivalry performed by men eager to return home to protect defenseless women. This dissertation expands upon these points by examining the rich but understudied archive of sympathetic desertion narratives that spread through British, American, Canadian, and French popular culture during this time period.<sup>14</sup>

In some cases the American public enfolded desertion stories into the heart of their patriotic martial celebrations, but these dramatizations also carried the potential to pose uncomfortable challenges to the mainstream cultural assumptions that Eustace describes. Rather than portraying domestic and national loyalties as intertwined and symbiotic, desertion stories stressed that private and public duties could come into painful conflict and that good men might be tragically forced to choose between the defense of their families – particularly vulnerable female relatives, wives, or sweethearts – and the defense of their country on the battlefield. These popular entertainments complicated widely accepted celebrations of war by portraying

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<sup>14</sup> Nicole Eustace. *1812: War and the Passions of Patriotism* (Philadelphia: University of Pennsylvania Press, 2015).

sympathetic deserters who heroically risked death or disgrace to return to a dying mother or a distressed wife. Some stories ended with deserters winning pardon and thus affirmed an image of merciful nationhood, reassuring audiences that public, familial, and romantic obligations could ultimately be reconciled and that the state would not condemn its soldiers for placing the needs of their loved ones as their highest priority. Other narratives, however, ended in tragedy and criticized the armies and even at times the nations whose harsh demands for service separated men from the women who loved them. A few desertion melodramas even experimented with unorthodox visions of feminine patriotism, granting their heroines a love of country strong enough to complicate their relationships with deserting men. While Eustace showed that mainstream American popular culture conflated romantic and martial fidelity, there were nonetheless important avenues of popular culture that dramatized intense conflicts between personal love and national loyalty. The most radical among these texts used gruesome execution stories about deserters to make anti-war arguments, or imagined noble deserters on the Canadian frontier who would condemn any narrowly jingoistic nationalism.

This dissertation joins the growing field of scholarship focused on the history, law, and peoples of the U.S.-Canadian frontier, arguing that army deserters and the controversies surrounding them provide a valuable lens through which to examine many of the central concerns of borderland historiography. The need to pursue or protect deserters called on local communities to ascribe legal and political meaning to their borders. Deserters deployed the borderline instrumentally as they crossed and re-crossed it in order to signal their intentions to the army and negotiate their own surrenders. Over the first half of the nineteenth century it became increasingly possible for wider publics to sympathize with lower-class enlisted men, particularly when border-crossing brought their status as white fugitives into comparison with



that of black fugitive slaves in antebellum legal cases that tested international treaties and law. Personal memoirs of real deserters and sentimental imaginings of fictional deserters contributed to developing ideals of patriotism and nationalism, while the challenges of policing the border became part of continuing transnational interactions. The study of international army desertion enriches our understanding of the ways that the border and the soldiers who crossed it defined one another in diplomatic, judicial, martial, local, and popular contexts.

### *Chapter Summaries*

Chapter One provides an overview of the geographic, political, and military development of the U.S.-Canadian border before 1860. It reviews the major military and diplomatic events that affected borderland residents. It describes the progress of land surveys and army fortification along the northern frontier. In addition, it provides quantitative summaries of British and American troop dispersals and desertion numbers. The chapter lays out the context within which Anglo-American desertion controversies developed during this period.

Chapter Two examines two published autobiographical narratives written by deserters who crossed the border from Canada to the United States, as well as the writings of other borderland soldiers and officers, in order to reconstruct the spectrum of contemporary opinions about desertion's personal and patriotic meanings. Deserter authors used the genre of the captivity narrative to reflect on the act of desertion and its ethics, defending their own ideals of national allegiance and refusing to view their military crimes as shameful. Grappling with the challenges of authorship in the absence of firmly established models of autobiography, these writers drew on a variety of techniques to dramatize the cruelty of British military punishments and to frame their desertions as praiseworthy escapes from martial savagery. At the same time, they expressed continuing moral commitment to obligations of debt and property, illustrating the

ways in which desertion could become problematically entangled with issues of debt or theft. Their stories were part of wider international discussions in public print and private correspondence that interrogated the image of American prosperity and asked whether material gain could justify a change in allegiance. Portraits of the lives of individual deserters carried symbolic weight in the ongoing British and Canadian discourse against the purportedly false promises of American democracy. Frontier desertion intertwined issues of political, military, and property crime on a personal and communal level that then had to be dealt with on the international diplomatic and legal plane.

Chapter Three explains why legal measures for extraditing deserters did not develop between the U.S. and Canada, despite the fact that both high- and low-level authorities often expressed the wish for such accommodation. Roadblocks to successful compromise arose because, in both law and diplomacy, decision-makers associated army deserters with two other fugitive groups: deserting sailors and fugitive slaves. In early years, naval impressment controversies made any high-level compromise on the exchange of deserters impossible. Meanwhile, the legal cases of escaping fugitive slaves and British deserters called on local borderland political, military, and judicial officials to engage creatively with the legal categories of property and personhood as they attempted to exploit important differences in the way international law defined the extradition of persons in contrast to the rendition of property. In the early nineteenth century, officials on the Detroit frontier refused to return fugitive Canadian slaves without simultaneously arranging the return of army deserters. Several decades later the flow of American fugitive slaves to Canada prompted U.S. officials to use deserters as a bargaining chip, offering to return British soldiers and sailors in exchange for American slaves. Due to the strength of abolitionism in Britain, this negotiation failed, and as a result both slaves

and deserters were excluded from the Webster-Ashburton extradition treaty in 1842. However, both groups continued to be targeted in legal cases that redefined fleeing soldiers and slaves as thieves, since robbery was listed in the treaty as an extraditable offense. Several post-treaty legal cases explored the conflicting claims of property rights and fugitive persons, ultimately establishing a strict interpretation of the treaty that defeated British attempts to reclaim army deserters. These decisions took on a public, popular dimension as American newspapers insisted that, so long as the British refused to cooperate in the return of American fugitive slaves, American courts should deny them their soldiers by the same legal logic. In this way, the actions of fugitive slaves and their supporters in the British public secured legal protection for thousands of fleeing soldiers in both the United States and Canada.

Chapter Four discusses the U.S. and British militaries' on-the-ground practices of reclaiming deserters across the border in the absence of any legal extradition mechanism, emphasizing the mixed strategies used both before and after the War of 1812. The chapter clarifies the non-linear chronology of the border's development, with the eighteenth century's strong dividing line softening in the first decade of the nineteenth century as Canadian military officers received temporary authorization to discreetly cooperate with Americans in illegal deserter exchanges. The frequent breakdowns of these accommodations show that desertion controversies prompted local authorities to more strongly define the international border's legal meaning. Even military posts far from oversight or central supervision were often sensitive to the limitations of their authority under international law, and officials there frequently respected and enforced the border's significance as an asylum line both before and after the War of 1812. The chapter seeks to complicate assumptions about military action on the frontier. Military officers sometimes found it beneficial to pretend that cross-border pursuits were a ubiquitous and

universally accepted element of army life on the frontier, but in fact they represented a patchwork of unstable compromises. After the War of 1812, the cross-border pursuit of deserters sporadically persisted, and military officers continued to reclaim their soldiers using mixed methods of cooperation, pardon, and force. The pursuit of deserters highlighted geographical and political areas along the developing border where locals could continue to imagine the dividing line between them in different ways – watercourses, Native reservations, and the areas surrounding ongoing geographical surveys remained ambiguous spaces where jurisdiction could be contested.

Chapter Five examines the defense strategies deployed by deserters when they faced general courts martial along the northern frontier. It quantifies the various ways deserters returned to their armies – arrest by civilians, arrest by soldiers, arrest by both, or self-surrender. It turns attention to the system of monetary rewards that the American and British governments instituted to encourage civilians and fellow soldiers to turn in deserters. This system led to an inflation of desertion charges as absentee soldiers were charged with desertion rather than absence without leave, since the former charge attached a profit to arrests that the latter charge lacked. Recognizing this economic reality, many soldiers accused of desertion – even those who were actually guilty of it – tried to convince their military judges that they had in fact intended to return of their own free will. This was their way of bargaining for the milder punishments attached to absence without leave rather than the severe penalties of desertion. Borderland deserters developed gestures of self-surrender that utilized the international border to help prove their intent to return. By first crossing to Canada, and then coming back to American territory, they offered powerful evidence that they never intended to abandon the army altogether. Even when these gestures did not prevent soldiers from being convicted of desertion, their defensive

arguments did sometimes succeed in reducing their punishments. The chapter traces the uneven history of flogging in the U.S. army – it was outlawed in 1812 but reinstated from 1833 up to the American Civil War – in order to illustrate how British anti-flogging campaigns combined with American ignorance of their own army's conditions to create a popular impression that physically torturous martial punishments were a distinctly British, rather than an American, practice. Recognizing growing trends of reform in many institutions that had traditionally sanctioned corporal punishment, many British and American writers denounced military flogging as a punishment that degraded the character of its victims. Deserters on trial could appeal to this growing cultural perception by writing defense statements in carefully elevated language, claiming a middle-class sensibility for themselves in order to make themselves appear too respectable to deserve corporal punishment.

Chapter Six delves into the rich variety of fictional desertion narratives circulating in American and Canadian popular culture, observing their potential either to reaffirm or challenge popular celebrations of martial glory. The majority of fictional works offered strikingly sympathetic portrayals of deserters, casting them as the heroes of sentimental literature or the victims of poetic tragedy. Many of these tales contrasted the pull of domestic ties against the severe demands of national duties, portraying respectable men who deserted in order to answer the needs of ailing parents, wives, or sweethearts. The stories focused on women who suffered due to the absence, punishment, or death of the men they relied on, but also deployed female characters to provide happy endings by appealing for pardon and mercy from military or political leaders. Authors played on the double meanings of “desertion” in both English and French, as the same vocabulary was popularly used to refer both to the abandonment of armies and to the abandonment of women. Some of these fictional works offered strongly critical portrayals of the

severity of martial law, while others suggested that humane leaders could be trusted to forgive soldiers who placed the defense of their families first. Performances of desertion plays such as Charles Kemble's *School for Soldiers* and Louis-Sebastien Mercier's *Point of Honor* raised questions about the meaning of martial glory and honor while also proving malleable enough to be folded into enthusiastic nationalistic celebrations. Fictional desertion stories focused above all on the drama of men facing execution by firing squad, and dozens of works recreated such scenes in styles ranging from grim realism to children's comedy. Several antebellum desertion stories mounted more radical critiques of martial models of patriotism as the influences of evangelicalism and pacifism led writers to attack the evils of war and army life in uncompromising terms. The novella *William Vane*, written by a Universalist pastor living on the Canadian frontier, celebrated desertion as a positive good that reflected a sense of internationalism and Christianity that placed love of all fellow men above the kind of misguided patriotism that led to wars. The variety of desertion literature contributed to developing American nationalism even while at times sharply questioning whether public and private duties could be successfully balanced.

Cumulatively, these chapters suggest that in their attempts to understand and respond to international army desertion, many Americans, Canadians, and Britons interrogated the character of their countries and the meaning of the border between them. In attempting to justify themselves, deserters searched for the flexibilities in British and North American culture that left emotional and intellectual room for public leniency, sympathy, and even admiration toward soldiers who left the army behind them. At the same time, deserters' stories became entwined with ethical complications such as property crime or corporal punishment. Desertion also called on its participants and observers to weigh the claims of the domestic against those of the public

sphere. At times the desertion of British soldiers from Canada to the United States fired those neighboring societies' longstanding argument over democracy as a political system and equality as a social value, contributing to both societies' emergent nationalist ideals. Diplomatic, judicial, and military officials had to make decisions about the pursuit or exchange of deserters that affected the practical significance of the international border, while court martialled soldiers used that same border to help them ameliorate their guilt under the strictures of military law. As popular audiences and readers imaginatively engaged with the challenge desertion posed to traditional martial and national values, they experimented with the limits of their 'imagined community' and, most often, extended it to include deserters within their celebrations of patriotism.

## Chapter One

### An Overview of the Development of the U.S.-Canadian Border

This chapter will supply an overview of the specific military, political, and geographic conditions that shaped the development of the U.S.-Canadian border, laying out the context within which borderland desertion operated. The process of creating a mutually recognized border between the Canadian provinces and the United States was fraught with difficulties from the beginning. Negotiating, defining, surveying, defending, and marking this border was a work in progress from the late eighteenth to the twentieth century. Attempts to locate the precise geographical limits of each side's sovereignty repeatedly led to confusion and controversy, while hopes of territorial gain precipitated one war and nearly ignited several others.

International diplomats of the late eighteenth century had to work with limited and flawed geographical tools and were unavoidably haphazard in their approach to dividing up territory. The border was first formalized by the Treaty of Paris that ended the American Revolutionary War in 1783. British and American diplomats brought a map to their negotiation table and drew a line on it marking the new boundary as far west as the Mississippi River. In the treaty, they did their best to describe the line they had drawn, naming the landmarks listed on their map and referring to degrees of latitude, lakes, rivers, and highlands.<sup>1</sup> However, their agreement was quickly beset by the cartographic problems typical of their era: the map they had used in Paris was inaccurate. Some of the landmarks the diplomats referred to in the treaty did not exist, and those that did often had different names and dimensions than they had expected. Each time the diplomats' topography failed to definitively correspond to reality, the British and

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<sup>1</sup> Gary Alden Smith, *State and National Boundaries of the United States* (Jefferson, NC: McFarland & Company, Inc., 2004), 18-20; on the twentieth-century process of marking the border, see Craig Robertson, "Locating the Border," *Social Identities*, vol 14, no 4 (July 2008), 447-456.



Americans would debate which nearby landmark came closest to the one described in the treaty. Each side used these opportunities to attempt to claim more territory for their own country, with the U.S. often nominating landmarks as far north or east as possible and claiming that they best satisfied the terms of the accord, while the British developed counterclaims in the opposite directions. As a result, areas of contested jurisdiction sprang up in the borderlands and disputes over them lasted for decades. The largest disputed zone lay in the unsettled, forested wilderness between Maine and New Brunswick.<sup>2</sup>

The British decision to violate the terms of the Treaty of Paris by retaining occupation of the "western posts" further complicated the situation from the 1780s to the mid-1790s. These posts were military forts located on territory that both countries recognized as American, but the British kept garrisoning them with their own troops. Their goal was to maintain alliances with Native Americans, particularly those in the Ohio Valley who could serve as a buffer between Upper Canada and pioneering American settlements. The British also hoped to profit by using the posts to prolong their control of fur trade routes and pressure American diplomats for concessions on overdue debts. Many of the British-occupied western posts clustered near the newly defined border, including the island of Point-au-Fer in Lake Champlain; Oswegatchie (modern-day Ogdensburg), Oswego and Niagara in New York; and Detroit and Michilimackinac in the Northwest Territory.<sup>3</sup>

Expecting to inherit the disputed forts eventually, the American military of these early years did not spend its extremely limited resources attempting to establish new military posts along the northern international boundary. Instead, the U.S. established its forces in the

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<sup>2</sup> Smith, *State and National Boundaries*, 18-20.

<sup>3</sup> Robert S. Allen. *His Majesty's Indian Allies: British Indian Policy in the Defence of Canada, 1774-1815* (Quebec: Dundurn, 1993), 56-60.

Northwest by building new fortifications along the Ohio River and its interconnected waterways. These rivers marked the southern boundary of the Northwest Territory and the U.S. army extended its lines of supply and attack upwards, making several bloody, disastrous attempts to defeat Native confederacies before Anthony Wayne finally mounted a successful campaign in 1794. The British government had meanwhile stopped paying for the repair and physical maintenance of the western posts, aware that they would likely have to surrender them before long. During the first thirteen years of its existence, then, the international border was militarily manned on its American side by uncomfortable British garrisons stuck in rotting wooden forts. These beleaguered officers and troops attempted to maintain local influence over Native, French, and British inhabitants, hold off American settlement, and impede smuggling while also battling desertion in their own ranks.<sup>4</sup>

This situation drew to a close with the Jay Treaty of 1794-95 and the Treaty of Greenville that followed immediately thereafter. The British abandoned their Native allies and agreed to withdraw from the western posts on American territory. Many Native American peoples of the Ohio Valley, after years of hard-fought resistance, conceded to U.S. demands and sold most of their land to the new federal government. The Jay Treaty promoted a porous understanding of the borderlands, awarding Native Americans and British traders the right to move freely across the international line and guaranteeing that British subjects could choose to continue living in American territory. These British residents would be protected in their rights and property without having to become U.S. citizens. No passports were required for travelers between Canada and the United States during this era. Although international trade goods were supposed

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<sup>4</sup> William H. Guthman. *March to Massacre: A History of the First Seven Years of the United States Army, 1784-1791* (New York: McGraw-Hill, 1974), 35-54; for useful maps and summaries of all U.S. army forts during the 19<sup>th</sup> century, see Francis Paul Prucha. *A Guide to the Military Posts of the United States, 1789-1895* (Madison, WI: State Historical Society of Wisconsin, 1964).

to funnel through customs houses and revenue ships attempted to enforce the customs laws, smuggling was common. In 1796 American troops moved into the dilapidated border forts in the north, while the British withdrew and constructed new, immediately adjacent posts in Canadian territory.<sup>5</sup>



**Figure 1.1:** Print of British army surgeon Edward Walsh's painting of Fort George in Upper Canada as seen from Fort Niagara, New York, 1813.<sup>6</sup>

Deeper within Canadian territory the British maintained control over older and more important military defenses. British policymakers considered Lower Canada (the modern-day province of Quebec) and the Maritime provinces, particularly Nova Scotia, as the military keystones vital to the defense of British North America. Lower Canada was far more populous and economically robust than the fledgling Loyalist settlements in Upper Canada (modern-day

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<sup>5</sup> Taylor, *The Civil War of 1812*, 55-56; Allen, *His Majesty's Indian Allies*, 84-85; for a brief sketch of borderland customs houses, see Heather N. Nichol, *The Fence and the Bridge: Geopolitics and Identity along the Canada-US Border* (Waterloo, Ontario: Wilfrid Laurier University Press, 2015), 107-109.

<sup>6</sup> The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection, The New York Public Library. "[A view of Fort George, upper Canada, from old Fort Niagara.]" New York Public Library Digital Collections. Accessed May 1, 2016. <http://digitalcollections.nypl.org/items/510d47d9-7b5f-a3d9-e040-e00a18064a99>. For a history of British officer artists active in Canada during this time period, see Jim Burant, "The Military Artist and the Documentary Art Record," *Archivaria* 26: Archives and Military History (Summer 1988), 33-51.

Ontario) and New Brunswick, but the British believed the French-Canadian population could not be relied on to fight against an American invasion. The British maintained their largest garrisons of regular troops at Quebec City and Montreal, knowing that if conflict broke out and the Americans seized control of these eastern towns, they could cut off British lines of supply and communication with all the settlements further west. Any successful defense of British North America absolutely depended on maintaining the British ability to reinforce its colony across the Atlantic. In wartime, British troops, materiel, and money would have to be landed at Halifax, Nova Scotia, funneled through New Brunswick to Lower Canada, and extended westward. It would also be vital for the British to dominate the navigation of the Great Lakes, and they therefore maintained an important navy yard at Kingston on Lake Ontario and partially reconstructed Fort Erie further west.

Unfortunately for the British, there was a natural waterway route through Lake Champlain and up the river corridor of the Richelieu Valley that could aid American incursions from New York and Vermont into Lower Canada. These waterways could give a well-organized invading army the opportunity to quickly seize unfortified Montreal and place the stronger bastion of Quebec City under siege. The small British fort on the Isle aux Noix just north of Lake Champlain would not be strong enough to delay American forces for long. The loss of Montreal would temporarily cut off the western Canadian settlements, as would the loss of any of the Great Lakes or the interruption of British navigation on the St. Lawrence River. But the Canadian winter would soon put an end to any campaigning season and give news time to reach England. As long as the British kept a firm foothold in eastern Canada by holding Quebec City and maintained their landing base at Halifax, Nova Scotia, they could send sufficient reinforcements to retake any territory lost in early battles. However, if Quebec City or Halifax

fell to the Americans, no further British reinforcements would be able to reach the interior and all the Canadian provinces would be lost.<sup>7</sup>

Despite the danger Canada's geographical vulnerability presented, British administrators and taxpayers were unmotivated to pour money into improving Canadian defensive works. Nor did the British government ask the Canadians to contribute taxes toward their own defense, having previously lost all the other American colonies over that very issue. With no one willing to invest in them, fortifications in Canada deteriorated. The old French forts that once protected the Richelieu Valley fell into such disrepair that they became indefensible. Even the famous fortified stone walls of Quebec City, one of the few military posts in Canada constructed out of permanent materials rather than wood and earth, grew dilapidated through years of neglect. The weak garrisons of British regulars were only intended to supply a core of trained fighters and officers who could theoretically lead large groups of volunteer militias in defense of their own homes. This strategy seemed unrealistic to contemporary observers.

From the 1780s to the first decade of the 1800s the number of British troops stationed in Canada dropped from roughly 5,000 to below 3,000. Colonial political and military officials generally assumed that if war broke out the Americans could quickly raise a volunteer force too large to be long delayed by the small regular army in Canada. They understood that, if forced to defend the provinces, they would have to mass most of their available soldiers at Quebec City, and to a lesser extent Halifax, since those two strategic sites had to be held. They would have to leave the settlers of Upper Canada and the rest of the Maritimes to fight for themselves on the doubtful strength of their local militias. They doubted that the Loyalist population of Upper Canada and the Maritimes, who had already suffered considerable loss and dislocation, would

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<sup>7</sup> Hitsman, *Safeguarding Canada*, chapter 4; Schweninger, "A Lingering War Must Be Prevented," 4-10.

rally once more in spirited resistance should another war break out; most seemed exhausted and disillusioned. Indeed, the British troops dispersed through Upper Canada were largely for show, intended to falsely reassure local Loyalists and Native American allies that they could rely on British aid in their defense.<sup>8</sup>

In 1803 the U.S.-Canadian border expanded westward not through war but through purchase. When Thomas Jefferson's administration bought the Louisiana Territory from Napoleon, the French claimed that no clear northern border had ever been officially ratified between British Canada and French Louisiana. However, both the British and Americans informally accepted the 49<sup>th</sup> parallel as the northern margin of Louisiana Territory. Although this border was not ratified by any new treaty or surveyed by any authorized teams, its invisible line of latitude served as the theoretical dividing line between Canada and the United States from the Mississippi River west to the Rocky Mountains. Unlike the border divisions further east that were often marked by topographical features including major rivers and the Great Lakes, the midwestern line had no physicality and was not recognizably demarcated. In the early nineteenth century these borderlands were little explored. Native American settlements and hunting grounds and the forts of commercial fur trade companies, rather than those of imperial or national armies, dominated the area.<sup>9</sup>

The pressures of the French Revolutionary and Napoleonic Wars ensured that the British were quick to cut defense costs in their North American colony, but fortunately for the Anglo-Canadians, the American federal government proved equally averse to military spending. Both the British army in Canada and the federal army of the United States remained too small to be

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<sup>8</sup> Hitsman, *Safeguarding Canada*, 48, 58, 65-66, 72-75.

<sup>9</sup> Smith, *State and National Boundaries*, 122. Rupert's Land, a vast swathe of territory west of Upper and Lower Canada and contiguous to what is now considered the Midwestern region of the United States, was owned and administered by the Hudson's Bay Company until 1870.

considered prepared for territorial defense or invasion. In 1789 the U.S. army concentrated in the Northwest numbered under 700 men. War campaigns against Native Americans briefly ballooned the American forces to over 5,000, but by 1796 they had settled around 3,300 in near equivalence to Canadian numbers. However, growing Anglo-American tensions over naval impressment worsened in 1807 when a Royal Navy ship, the H.M.S. *Leopard*, fired on the U.S.S. *Chesapeake*, killing and wounding several U.S. sailors while abducting four crewmen whom the British claimed as naval deserters. The resultant expectations of war led to an increase in the armed forces in Canada and the United States, with the U.S. raising roughly 10,000 men and the Canadians gradually increasing their regulars and fencibles to nearly the same number.<sup>10</sup>

Impressment controversies and neutral shipping rights, combined with U.S. ambitions to seize Canada, laid a groundwork during the first decade of the nineteenth century that would culminate in the War of 1812. However, as historian Alan Taylor has emphasized, residents of the Canadian borderlands did not divide their loyalties neatly along nationalistic lines. The New England states bordering Canada developed strong trading ties with their northern neighbors and many Yankee merchants also relied heavily on overseas trade with Britain and its West Indian colonies. Politically, New Englanders remained the key constituents of the American Federalist party and opposed the Republican U.S. administrations that tried to enforce trade embargoes. They also opposed the calls for war against Britain that western and southern representatives in the U.S. Congress promoted.

For two decades before the War of 1812, the political leaders of Upper Canada had hoped to strengthen their population and economy by encouraging immigration from America. They

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<sup>10</sup> William Skelton, *An American Profession of Arms*, 4-11; Hitsman, *Safeguarding Canada*, 79, 85; Spencer C. Tucker and Frank T. Reuter, *Injured Honor: The Chesapeake-Leopard Affair, June 22, 1807* (Annapolis, MD: Naval Institute Press, 1996).

granted free farms to settlers and offered large tracts of land to speculators, welcoming Americans who were willing to take a loyalty oath to the British government. In practice, many American squatters evaded even that small requirement and worked their farms without swearing loyalty to any polity. While the U.S. federal government used its small army to evict squatters and attempted to sell its western lands, Upper Canada provided not only a cheaper but a safer alternative for pioneers, since hostile attacks from Native Americans were less likely to threaten settlers in Canada than in the U.S. Northwest. Upper Canada saw an influx of so-called "Late Loyalists," many of whom were Yankees who maintained familial and business ties with New Englanders while taking up their new land under the British flag.<sup>11</sup>

Deserting soldiers from the U.S. border posts had also joined this tide of immigrants into Upper Canada. One American captain commanding at Fort Niagara decried the "rage to get situations" across the river where "every imigrant is entitled to 200 acres of land on taking the oath to that government, - a large bounty if he inlists [in the British army], or high wages if he prefers working." He reported that American soldiers in Detroit and Niagara were taking the bounties paid them at the beginning of their U.S. enlistments and absconding to Canada to become farmers, seasonal laborers, or turncoat soldiers. Neither Late Loyalists nor deserters necessarily had much investment in upholding British rule in Canada, however.<sup>12</sup>

By the time the War of 1812 broke out, the U.S.-Canadian borderland was peopled on both sides by immigrants, some of whom retained personal and professional connections with one another, and many of whom were not strongly attached to either the Canadian or American governments. Almost as soon as the U.S. declared war, New England states and Maritime

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<sup>11</sup> Alan Taylor, *The Civil War of 1812*, 23-24, 49-54; Hitsman, *Safeguarding Canada*, 54, 88-89; Sheppard, *Plunder, Profit, and Paroles*, 13-23.

<sup>12</sup> "Captain James Bruff report from Fort Niagara." James Bruff to William Simmons, November 5, 1796. *Papers of the War Department: 1784 to 1800* website, accessed 4/30/16.



Canadian provinces arranged to maintain their trade with one another. Throughout the war the British army in Canada bought vital provisions from Vermont and other neighboring states. An early American campaign to invade Lower Canada and capture Montreal was defeated before it began when U.S. militiamen in the northeast refused to march across the border.<sup>13</sup>

Similar patterns repeated themselves further west. The Americans lost the Battle of Queenston Heights largely because their militia refused to cross the border and reinforce the regular troops who were already fighting on the Canadian shore. Meanwhile, Canadian authorities found it tremendously difficult to raise effective militias unless the locals feared the destruction of their homes. Early in the war when faced with American invasion, thousands of Canadian citizens flocked to incoming American armies and turned themselves in as prisoners of war. They received in return certificates of 'parole' that guaranteed the safety of their persons and property provided they swore not to fight for the remainder of the conflict. Canadians eagerly sought these documents in order to evade their militia duties, and the Upper Canadian government tried in vain to convince its subjects that such policies were not actually sanctioned by recognized rules of war.<sup>14</sup>

However, as the war continued it grew more violent and destructive as both armies began pillaging and burning border towns. American troops set fire to public buildings in the Upper Canadian capital city of York (modern-day Toronto) and eradicated the houses of Newark residents near Niagara Falls and Native Americans at Moraviantown. British troops conducted retaliatory raids in New York that targeted civilian homes in Buffalo, Black Creek, Lewiston, and Youngstown. The last year of the war saw higher turnouts of local militiamen in Upper Canada who believed they were in danger of losing their property and livelihoods. The armies'

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<sup>13</sup> Hitsman, *Safeguarding Canada*, 88-89, 97; Sheppard, *Plunder, Profit, and Paroles*, 155.

<sup>14</sup> Hitsman, *Safeguarding Canada*, 94; Sheppard, *Plunder, Profit, and Paroles*, 79-92.

deliberate, malicious property destruction engendered new levels of bitterness among borderland residents in the Niagara region that helped change that section of the border into a socially stronger dividing line.<sup>15</sup>

Yet the war also heightened internal divisions within each country. Almost all of the military and economic damage inflicted in Canada was concentrated in its western province, Upper Canada. The majority of Canadian subjects and British soldiers remained in relative comfort in Quebec and Montreal in Lower Canada, braced for an American invasion that, when it finally arrived in 1813, fell apart quickly and with little cost in lives or property. An overambitious Canadian assault on Plattsburgh, New York late in 1814 did inflict a score of casualties on the troops in the east, but otherwise wartime losses fell disproportionately on the neglected western province. Throughout the war British policymakers refused to allow troops to be diverted west for fear of losing their vital footholds in the east, leaving Lower Canadian communities largely insulated from the dislocations and hardships of their Upper Canadian neighbors.

Upper Canadians resented being left unsupported and, in some respects, victimized. Historian George Sheppard found that after the War of 1812, Upper Canadians reported in their remuneration claims – in the 923 cases wherein a single responsible party could be identified – that it was British troops and their Native American allies, in search of supplies or plunder, who had been responsible for 49.6 percent of the incidents of property damage in the Canadian territory they were supposed to be protecting. The war did not become a unifying, nationalist experience in Canada until decades later, when romanticized memories of battles and heroes became subjects for memorialization and celebration. In the United States the nationalistic

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<sup>15</sup> Taylor, *The Civil War of 1812*, chapter 9; Sheppard, *Plunder, Profit, and Paroles*, 92-94.

cultural aftermath of the war arrived more quickly. During the conflict, internal regional division grew serious enough that the New England states, under Federalist leadership, considered secession. Then the final U.S. victory of the war – Andrew Jackson's defeat of hardened British veterans at New Orleans – rallied Republican morale to such an extent that the Federalist Party fell apart in disgrace. American politics entered a new phase of broader political consensus without any clearly organized opposition party.<sup>16</sup>

The War of 1812 drew to a close in the early months of 1815, and the return to peacetime not only in North America but across Europe in the aftermath of Napoleon's defeat ended decades of global struggle and posed important challenges for British authorities. They considered how best to organize their own populations to better promote internal loyalty. The sudden cessation of wartime production led to widespread urban unemployment and economic depression in Britain. Imperial authorities feared what would happen if hundreds of thousands of discharged soldiers and sailors were to flood back into the home counties with no means to support themselves. It seemed an invitation to domestic revolution. The British administration decided to encourage discharged soldiers to transition into colonial farmers and offered them land grants, rations, and supplies if they would forgo returning to Britain.

In Canada, the British established settlements of former soldiers along the U.S. frontier. In addition to hundreds of veterans who had served in Canada during the war, hundreds more who had served elsewhere in the empire immigrated to take up their free lands. The Canadians hoped that these settlers would help to solve the militia problems that had proved so crippling in the recent conflict. With their training and combat experience, these new civilians could presumably be trusted to turn out and mount a competent defense should the need again arise.

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<sup>16</sup> Sheppard, *Plunder, Profit, and Paroles*, 122-129, 249-251; Taylor, *The Civil War of 1812*, 419-421.

Upper Canadian authorities also revoked the previous generous land grant policies that had encouraged American immigration, reserving such benefits for British migrants instead.<sup>17</sup>

Colonial political leaders in Canada hoped these policy changes would build a more patriotic and reliable borderland population, but in practice the drop in American immigration only slowed Canada's economic development. The post-war financial crash proved particularly severe in Upper Canada, which eventually faced bankruptcy. Reparation claims for wartime losses that Canadians submitted to the British government also dragged on unpaid for decades, while New York refugees who had lost their homes and businesses were more successful in their appeals for federal support. Although the United States was by no means immune to severe financial panics, in the antebellum era the population and economic growth of the American northeast and northwest far outstripped that of the Canadian provinces. The Americans' numerical and fiscal advantages further increased in the 1820s once the construction of the Erie Canal improved transportation and trade to the interior and helped New York City funnel trade away from Montreal.<sup>18</sup>

Although the terms of the Treaty of Ghent that ended the War of 1812 included almost no territorial changes between Canada and the United States, the international agreement nonetheless transformed the borderland by pushing forward the work of surveying. The treaty authorized the formation of several cooperative international boundary commissions, to be composed of British and American members, that were charged with the task of locating and finalizing the territorial limits dictated by earlier treaties and recommending resolutions for areas that were still contested. Even as these commissions set out to define the border more clearly,

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<sup>17</sup> Shaw, *First We Were Soldiers*, chapter 11; Taylor, *The Civil War of 1812*, chapter 16.

<sup>18</sup> Sheppard, *Plunder, Profit, and Paroles*, 171-177, 183-197, 210-222; Schweninger, "A Lingerin War Must Be Prevented," 92-93, 104-106.

the militaries of both neighboring nations built new fortifications and invested in defensive internal improvements on an unprecedented scale. Both countries spent heavily on constructing canals and improving roads parallel to the border that served the needs of both commerce and national security, providing trade routes in peacetime that would become lines of communication and supply during war. Soldiers in both armies were ordered to work on these projects, since their wages were considerably cheaper than the prices for civilian labor. The Canadians were particularly anxious to create a waterway connection between their Upper and Lower provinces that would be more defensible than the St. Lawrence River, which Americans could quickly interrupt or overrun. Several new canals answered this ambition, particularly the Rideau Canal running between Quebec and Kingston. Its distance from the borderline offered greater security for British communications, trade, and defense.<sup>19</sup>

Both the British and Americans tried to balance post-war concerns for national security with peacetime pressures for economy in military and naval expenditures. In order to cut costs both the British and Americans agreed to drastic naval disarmament on the Great Lakes. Soldiers of both nations also built large new forts at key strategic sites. Most notable were, on the Canadian side, the large stone walls of Fort Lennox taking shape on the Isle aux Noix just north of Lake Champlain and, on the American side, a fifty thousand dollar fortress just north of Rouse's Point, New York, seeking command of the same lake. Both nations concentrated their fortification funding in the east. The American War Department allowed many of the western forts to deteriorate, investing little in their improvement apart from some repairs to the war-torn Fort Niagara. When they garrisoned western forts at all, it was with small numbers of troops, often only 50 or 100 men. However, both sides saw the value in maintaining relationships with

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<sup>19</sup> Schweninger, "A Lingerin War Must Be Prevented," 84-98.

Native American peoples in the far northwest, near Lakes Huron and Superior. Isolated wilderness forts – the new British fort on Drummond Island in Lake Huron; the old American fort at Michilimackinac; new forts Gratiot and Brady in northern Michigan; and Fort Howard in Wisconsin Territory – served as valuable sites of trade and diplomacy and maintained more consistently manned garrisons.<sup>20</sup>

The work of the international boundary commissions soon undercut that of the U.S. military construction program. In 1818 one of the international commissions discovered significant errors in a previously accepted survey line that had, since the mid-1770s, marked out the location of the 45th degree of latitude. The false line had served as part of the locally recognized border between Canada, New York, and Vermont for two generations before its inaccuracies were discovered. A proper, revised survey would have placed long-standing American towns in Canada. Most importantly, when newly accurate calculations moved portions of the New York border nearly a mile southward, the expensive American fort at Rouse's Point stopped guarding the U.S. frontier and instead stood square in Canadian territory. Local New Yorkers wryly dubbed it "Fort Blunder." It was left to decay, a monument to the costs of geographical uncertainty.<sup>21</sup>

The conclusions and recommendations of this boundary commission proved so inconvenient that the two governments suspended its work without ratifying the corrected borderline along the 45th parallel. Portions of the eastern border in New York, Vermont, Maine, New Brunswick, and Lower Canada remained contested and were once again relegated to diplomatic limbo. The British and Americans did, however, sign a convention in 1818 that

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<sup>20</sup> Charbonneau, *The Fortifications of Isle aux Noix*, passim; Schweninger, "A Linger War Must Be Prevented," 102-103.

<sup>21</sup> James P. Millard, *Bastions on the Border: The Great Stone Forts at Rouses Point on Lake Champlain* (South Hero, VT: America's Historic Lakes, 2009), 5-16; Schweninger, "A Linger War Must Be Prevented," 72-79.

ratified the Midwestern borderline along the 49th parallel. They also granted permission for both British and American settlers to move into the Oregon Territory west of the Rockies where no international border between the U.S. and Canada had yet been decided.<sup>22</sup>

The War of 1812 had revealed the inadequacy of existing defensive and offensive preparations on the part of both the British and American governments, but the post-war impetus to fund and occupy major fortifications along the Canadian frontier died out on the American side within ten years. Throughout the post-war period Canadian troop strength on the border heavily outnumbered the American army presence, which had not always been the case before the war. For the U.S. army, the northern border constituted one strategic commitment among many in a large national territory, whereas almost all British troops in Canada remained near the American border throughout their tenure of service. By the mid-1820s many U.S. troops decamped from the northern frontier in order to meet the manpower needs of continuing wars with Native Americans, particularly the Seminoles of Florida. In the 1830s the bulk of the U.S. army took the lead in enforcing Jacksonian removal and reservation policies against Native American peoples. Patterns of Euro-Americans' voluntary settlement and Native Americans' involuntary settlement in the Midwest dictated the location of new U.S. forts, overshadowing any concern about monitoring the northern border. The U.S. did not cluster its new forts near the 49th parallel between the Great Lakes and the Rocky Mountains, but instead moved its troops ahead of the line of civilian settlement, guarding routes to the west and monitoring Native reservations.<sup>23</sup>

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<sup>22</sup> Schweninger, *ibid*; Smith, *State and National Boundaries*, 160.

<sup>23</sup> Schweninger, "A Lingering War Must Be Prevented," chapter 4; Watson, *Peacekeepers and Conquerors*, chapter 2; Prucha, *Military Posts*, 5-11.

The British, meanwhile, were attempting to envisage a viable defense strategy for Canada's future, and in 1819 and again in 1826 the Duke of Wellington recommended stronger army fortifications. With Britain no longer able to compete for control of the Great Lakes, improved defenses for Quebec and Halifax seemed more vital than ever. Though appropriations were slow and the full scope of Wellington's recommendations were never realized, progress continued during the 1830s. Quebec received an impressive new citadel and Kingston on Lake Ontario was reinforced. By the mid-1830s roughly 5,000 regular troops remained in British North America, half of which were stationed in Lower and Upper Canada, with the rest in the Maritimes and Newfoundland. By contrast, the American army's borderland presence dwindled to the extent that, in 1837, only two forts remained operational with a mere 200 troops at hand.<sup>24</sup>

This changed quickly once rebellions broke out, first in Lower and then in Upper Canada, during 1837-38, galvanizing both the British and American borderland armies. In the two

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<sup>24</sup> Hitsman, *Safeguarding Canada*, 118-129; Schweninger, "A Lingering War Must Be Prevented," 121.





**Figure 1.2:** View of the Citadel at Quebec City by John Richard Coke Smyth, 1840 <sup>25</sup>

Canadian provinces, groups of rebels, their numbers never exceeding several hundred, attempted to fight for a more republican form of government but sabotaged themselves through internal divisions, confusion, and unpreparedness. They were quickly routed by British regulars and local loyal militias, and many fled to the United States. There they encountered American "sympathizers," particularly in areas such as Niagara and Detroit that had suffered British incursions during the War of 1812. Combined groups of Americans and Canadians ventured back into Canada to stockpile ammunition and fight skirmishes. Near Niagara Falls, Canadian militiamen seized and burned the *Caroline*, an American merchant steamer that had been running supplies to the rebels. In the scuffle over the ship, a bystander on the American shore was fatally

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<sup>25</sup> John Richard Coke Smyth, "Citadel Quebec," 1840 print, M989X.72.13, McCord Museum Collections and Research. Accessed May 1, 2016.

shot and the incident became one of international grievance. Regarding Americans' raids into Canada more generally, the American administration assured the British that it did not support the aggression of its citizens, who were violating U.S. neutrality laws. However, the administration also claimed to have few means to effectively prevent these raids before the fact, since agitators' rabbleroxing meetings and voluntary armed drills were not technically illegal and the federal government hesitated to order them forcibly dispersed.

The situation could easily have escalated into war, but officers of the U.S. army, led by General Winfield Scott, arrived on the scene with reinforcements and – more importantly – excellent diplomatic skills. With several thousand troops behind him, Scott represented the federal government along the northern border. He and his subordinates used a combination of intimidation and negotiation to discourage sympathizers from undertaking further attacks on Canadian soil. They also shared all available intelligence about rebel movements and plans with the British officers at nearby Canadian forts and impressed them with the belief that the U.S. was making a good faith effort to control its citizens. At the same time the British tried to prevent further insurrectionary attacks by publicly executing or exiling captured rebel leaders and pouring army reinforcements into the Canadas. They raised their regular troop strength first to 7,000 and eventually to 12,000 even as local militias and volunteer provincial regiments comprised an additional 10,000 soldiers in Lower Canada and 12,000 in Upper Canada. At the same time, the desertion rate of the regular British forces in the Canadas dropped significantly. During the peacetime years immediately preceding the rebellions, British privates and NCOs deserted at a rate of roughly 8 to 10 percent, but in 1837 the rate dropped to 5 percent and then hovered between roughly 2 and 3½ percent. Military activity presented soldiers with meaningful

work while the movements of troops and provincial cavalry also kept escape routes to the U.S. better patrolled.<sup>26</sup>

Even as disturbances both within the Canadas and across the border died down, a new trouble spot emerged in the long-disputed border area between northern Maine and New Brunswick. The line of the border through that forested wilderness had been uncertain ever since Anglo-American diplomats' faulty map had cast doubt on the terms of the Treaty of Paris in 1783. Attempts to resolve the problem through international arbitration in the early 1830s had failed. The woods had remained largely unsettled and undeveloped, but during the 1830s residents of Maine and New Brunswick started aggressively moving into the territory and cutting lumber. The intruders ignored directives from the British in New Brunswick to stay out of the disputed lands, and eventually armed groups from both sides pushed into the territory and threatened to arrest or shoot each other. U.S. General Winfield Scott again worked out a peaceful settlement with British authorities, and residents from both nations were allowed to remain in the territory pending a resolution of the jurisdiction dispute.<sup>27</sup>

The Webster-Ashburton Treaty of 1842 provided a diplomatic resolution to many of the outstanding issues in the U.S.-Canadian borderlands. It finalized the official borderline from Maine to the Rocky Mountains, arranged reparations for earlier incidents like the burning of the American ship *Caroline*, and developed new extradition arrangements between Canada and the United States. It put a definitive end to the war scares of the late 1830s and returned the borderlands to a state of stable peace. This made possible the reduction of British and American

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<sup>26</sup> Watson, *Peacekeepers and Conquerors*, chapters 8 and 9; Hitsman, *Safeguarding Canada*, 136; Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (New Haven: Yale University Press, 1941), 34-37; Kenneth R. Stevens, *Border Diplomacy: The Caroline and McLeod Affairs in Anglo-American-Canadian Relations, 1837-1842* (Tuscaloosa: University of Alabama Press, 1989); Carol M. Whitfield, *Tommy Atkins*, 141-143.

<sup>27</sup> Watson, *Peacekeepers and Conquerors*, chapter 9.

borderland forces during the 1840s, though British officers in Canada were skittish of cutting their numbers too far. By the middle of the decade the low rates of British desertion that had held through the rebellions, raids, territorial disputes and their aftermath once again gave way to increased rates of escape and a dramatic reduction in the number of deserters who were captured before they reached America. In many respects the increased desertion rates signified that the military affairs of the borderland had returned to a state of business as usual, but diplomatically and geographically further challenges lay ahead.<sup>28</sup>

The 1840s and 1850s witnessed a number of important changes that helped to solidify both the border itself and the identity of the nations on either side. Lord Ashburton and Secretary Webster had not been able to agree on the extension of the international border across the remainder of the continent from the Rocky Mountains to the Pacific. Possible locations for that line ranged from a northern extreme, proposed by the Americans, at 54 degrees 40 minutes latitude, and a southern extreme, proposed by the British, that ran at 49 degrees latitude and then down along the Columbia River to the ocean. As an ideology of territorial expansion and "Manifest Destiny" grew increasingly popular in the United States, the Democratic Party elected President Polk, who made campaign promises to accept nothing less than the entire American claim to the Oregon Territory. War broke out on America's southern border, however, and rather than fight on two fronts the American administration compromised on the 49th degree of latitude. In 1846 the Oregon Treaty finalized the U.S.-Canadian border all the way to the Pacific (though off-shore islands remained in dispute for decades).<sup>29</sup>

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<sup>28</sup> Corey, *The Crisis of 1830-1842*, chapter 11; Hitsman, *Safeguarding Canada*, 153-154; for the number of deserters recaptured, see Burroughs, "Tackling Army Desertion," 30-31.

<sup>29</sup> Smith, *State and National Boundaries*, 186-189.

The Canadian provinces, meanwhile, gained the right of responsible government. The British intended for the Canadians to gradually take responsibility for their own peacetime defense and its expenses, though they did not yet withdraw the British troops stationed there. In the mid-1850s the Canadian legislature took faltering initial steps toward creating a better established militia force that might someday shoulder the burden of national defense. The regular armies in the borderlands, though reduced in number, extended westward and a new cluster of small American and British military forts appeared in British Columbia and Washington Territory, though the private forts owned and staffed by fur trade companies remained more important trading and social centers in the Midwestern and Pacific borderlands. Soldiers from both the British and U.S. armies contributed their efforts to the international survey teams that worked to demarcate the invisible line that separated their countries. Meanwhile, the discovery of gold along the west coast had increased desertion from both armies.<sup>30</sup>

The numbers of the two neighboring borderland armies grew more unbalanced as time went on. During the peace of the 1850s the Americans maintained an extremely skeletal presence. For much of the decade only 0.5% - 2% of the U.S. army's strength was stationed along the Canadian border between the east coast and the Great Lakes, and Michilimackinac in northern Michigan was the only U.S. fort that remained open throughout the decade. British garrisons still kept thousands of soldiers near the border, a policy that proved problematic once their army began experiencing its highest desertion rates during the late 1850s in response to the Crimean War in Russia and the so-called "Sepoy Mutiny" in India. Within a few years several

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<sup>30</sup> Stacey, *Canada and the British Army*, 93-94; Prucha, *Military Posts*, 14-21; Whitfield, *Tommy Atkins*, 142.

thousand soldiers decided to flee from Canada before they could be sent to die for British imperial interests in these wars abroad.<sup>31</sup>

By 1860, the end point of this study's chronology, the continental border between British Canada and the United States stretched from the Atlantic to the Pacific and the regular and provincial troops garrisoning its scattered fortifications rested in a peacetime lull before the intense transformations that would arrive with the American Civil War. I have set this stopping point for my study, although it would be another eleven years before British troops withdrew from Canada altogether in 1871. The last large wave of British desertion into the United States during the early 1860s merits its own study, as thousands of British soldiers accepted generous bounties to serve as substitutes for wealthy Americans who wanted to avoid the federal draft. These British soldiers' experiences fighting in, or perhaps deserting from, the Union army will, in the hands of future scholars, surely prove a fascinating contribution to the rich military and political historiography of the war that many consider central to American nation-building. Those interested in the withdrawal of British troops from Canada and the way that process shaped early Canadian nationalism have the work of historian C.P. Stacey to serve as a foundation. This dissertation, filling as it does the gaps between the wars of the first half of the nineteenth century, shows how the ambiguities of an unfinished, developing border turned international desertion into a peacetime challenge that was unique to its time and place.<sup>32</sup>

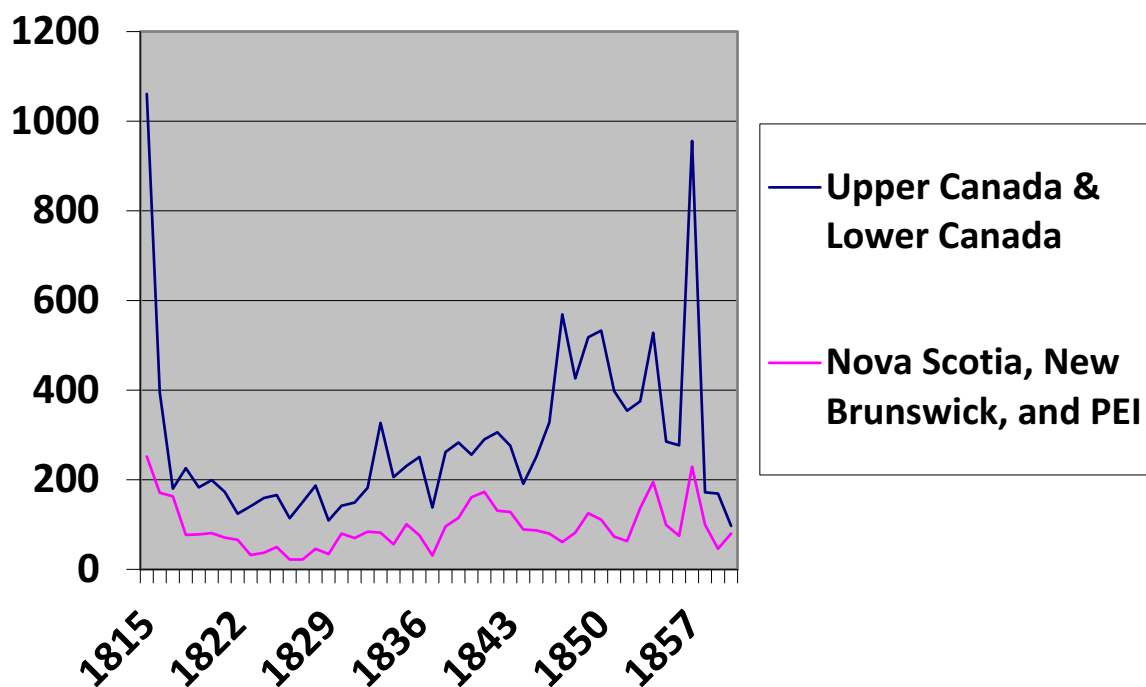
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<sup>31</sup> Percentage of total U.S. army strength on the northern border calculated from the figures provided in Schweninger, "A Lingering War Must Be Prevented," 273; Burroughs, "Tackling Army Desertion," 29.

<sup>32</sup> Whitfield, *Tommy Atkins*, 71, 142; Stacey, *British Army in Canada*, passim.

During this time period Canada had the highest army desertion rate of any overseas military station in the British empire. Its rate of *successful* desertion significantly surpassed that of the United Kingdom's domestic depots as well, since most Canadian deserters were never recaptured whereas nearly half of deserters in Britain either surrendered or suffered arrest. The two historians who have studied British army desertion from Canada in detail, Peter Burroughs and Carol Whitfield, arrived at similar estimations regarding its rates and volume from 1815-1860 [see Figure 1.3].<sup>33</sup>

**Figure 1.3: Number of British Army Desertions from Upper and Lower Canada & the Nova Scotia Command, 1815-1860**



<sup>33</sup> For Canadian statistics, see Burroughs, "Tackling Army Desertion"; for comparison with rates of desertion in Britain, see Burroughs, "Crime and Punishment in the British Army," 553-554.

However, these statistics cannot directly answer the question of how many soldiers deserted from Canada. These numbers came from the monthly returns that officers submitted to the War Office, but these reports introduced repetitions into the count. A soldier who deserted, was recaptured, and then deserted again in a later month or year would be reported twice. "Bounty-jumpers" made a regular business out of enlisting, collecting their initial payment and clothing, then deserting and repeating the process under alias elsewhere. One individual might rack up quite a few desertions, and in practice army records tracked these acts of desertion, rather than individual deserters, over time. No scholar has yet attempted to trace a significant sample of British soldiers through their service in Canada to identify repeat offenders and clarify the extent to which the acts of desertion tabulated in the official records outnumbered individual deserters.

On the other hand, some individual deserters also went unreported in these army records. If a deserting soldier got caught or surrendered, it was fairly common for officers to hush up the whole affair. On the roster a deserter might be marked as absent without leave instead, or an officer might offer punishment or pardon on his own authority without filling out any paperwork at all. By officially recording an offense, the officer committed himself to holding a court martial to resolve it, and many preferred to avoid that. Burroughs and Whitfield both assume that from the mid-1840s through the 1850s it is necessary to add all the reported AWOLs into the desertion column to reach realistic estimates. It is unclear the extent to which the same might be true for earlier decades as well. With some factors operating to inflate the army's numbers and others to deflate them, the real number of attempted desertions remains uncertain. However, it would have been hard for officers to cover up successful desertions since important matters of pay, rations, and clothing depended on their keeping accurate accounts of their troop strength.



Whitfield and Burroughs agree that the army records offer good enough estimates to illustrate the trends of desertion on the Canadian frontier.<sup>34</sup>

Certain factors that spurred soldiers to desert remained fairly constant: poor pay, bad food, a harshly cold climate made worse by insufficient government issues of warm clothing, and the dull routines of peacetime service relieved by too frequent resorts to alcohol. British soldiers in Canada were frequently drunk, hungry, bored, lonely, broke or indebted, and chilled to the point of extreme discomfort or frostbite during the long winters. Many of the same factors also operated among American frontier troops. Furthermore, under both armies' disciplinary systems harsh physical punishments, many of which amounted to torture, were meted out for minor infractions as well as the major infraction of desertion. Over the first half of the nineteenth century, despite steady resistance to reform on the part of the British army hierarchy, public pressure gradually induced an amelioration of the legal punishments allowed in the army in Canada. By 1860 the sentences available to British courts martial had finally come close to those mandated in the U.S. army throughout the time period, setting a cap on the number of lashes that a flogging punishment could impose and relying more on imprisonment and hard labor. Nevertheless, most historians have found it unsurprising that many enlisted men decided not to stay in the army under such conditions. In both the British and U.S. armies the highest rates of desertion occurred within the first year after enlistment. Many new recruits snuck away before their regiment departed for its new station, while others traveled to their posts but failed to adjust to the demands of the military regime.<sup>35</sup>

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<sup>34</sup> Whitfield, *Tommy Atkins*, 137-139, 143; Burroughs, "Tackling Army Desertion," 28-32.

<sup>35</sup> Burroughs, "Tackling Army Desertion," 33-35; Burroughs, "Crime and punishment in the British Army, 1815-1870," *English Historical Review* (1985): 545-571; Mark A. Vargas, "The Military Justice System and Illegal Punishments as a Cause of Desertion in the U.S. Army, 1821-1835," *The Journal of Military History*, Jan. 1991; 55(1):1-19.

In Canada, however, even veteran privates and NCOs of many years' standing left their posts. The British government made efforts in the 1840s to staff military forts on the Canadian border with soldiers who had already spent many years in the army, and even attempted to institute a rotation system for soldiers throughout their empire that would send regiments on an imperial circuit through India and the Caribbean before ending their tour abroad in Canada. These efforts had no long-term effect on the desertion rate. The secret to the small numbers of desertions in sites like India or the West Indies had less to do with loyalty than with opportunity. It was geographically difficult to desert from the Caribbean islands, and in India, British soldiers usually perceived broad cultural and racial gaps between themselves and the indigenous population that made them hesitate to escape into their societies. The United States, easily accessible geographically and very familiar culturally, offered long-serving soldiers better opportunity to desert, and many took it.<sup>36</sup>

Regional variations within the Canadian provinces also shaped British soldiers' opportunities to desert. Throughout the period desertions from Upper and Lower Canada usually outpaced desertions from the Nova Scotia command (which included New Brunswick and Prince Edward Island). Carol Whitfield noted more specifically that in the 1840s and 1850s Montreal was the Canadian post with the highest number of deserters, followed by Quebec City and Kingston on Lake Ontario. The Newfoundland station, located far from the land border with the United States, isolated amid an undeveloped wilderness, and manned with elderly or invalided pensioners, had a negligible desertion rate throughout the period.<sup>37</sup>

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<sup>36</sup> For the rotation system and other anti-desertion policies aimed at manning frontier forts with veteran troops, see Burroughs, "Tackling Army Desertion," 57-66.

<sup>37</sup> Whitfield, *Tommy Atkins*, 139-142, 145.

Chronological changes in the desertion rates hint at various events that heightened or reduced soldiers' incentives to leave. Their fear of being reassigned to a deadlier environment spiked desertion rates during the Crimean War and Indian Rebellion of 1857, but Whitfield and Burroughs noted that smaller increases in desertion rates often occurred when individual regiments were slated for transfer to routine duty in the West Indies. Occasionally a disease epidemic noticeably impacted the desertion rate, as did the cholera outbreak of 1832. The unusually low desertion rate brought on by the crises of the late 1830s lasted throughout the early 1840s only to give way to higher average desertion rates and lower recapture rates in the mid-40s. The reasons behind those changes are not entirely clear, though they may be partially explained by historical methods of tabulation (1846 was the year that historian Peter Burroughs presumably began combining AWOL and desertion numbers in his count; Carol Whitfield did the same starting in 1848, leaving a two year divergence in their numbers amounting to several hundred soldiers. It is unclear how sharply the desertion rate actually rose in 1846 and 1847). The gold rush inaugurated in 1849 influenced the desertion numbers of the early 1850s. While not all fluctuations in the recorded numbers are explicable, the large general trends seem to correspond to inciting incidents in the chronology of the time period.<sup>38</sup>

Those studying the U.S. army have encountered the same problems with official record-keeping practices that complicated Canadian desertion statistics, and several historians have conducted close studies of different groups of U.S. soldiers to determine the number of deserters as accurately as possible. Historian William Skelton determined that the small U.S. army of the 1780s had a desertion rate of 26 percent. J.C.A. Stagg examined the men recruited between 1802 and 1811 and came up with a much lower result, noting that 8.3 percent deserted once and an

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<sup>38</sup> Whitfield, *ibid*; Burroughs, "Tackling Army Desertion," 29-32.

additional 1.7 percent were repeat offenders. He also found that among these peacetime soldiers native-born Americans were more likely to desert than immigrants, possibly because they were more confident that they could find their way home. Examining the men who enlisted during the War of 1812, he found a 12.7 percent desertion rate. Stanley Siltan Graham sampled the records of enlisted men between 1821 and 1845 and calculated that 27 percent of those soldiers deserted, a rate that significantly exceeds the desertion rate from the British in Canada during the same time period. Dale Richard Steinhauer noted that:

Before the California gold rush, the highest desertion rates were from those posts situated near the border with New Brunswick and Upper and Lower Canada. Certainly the worst post for desertions was Fort Niagara, across the Niagara River from Canada. Just as the fort had the highest desertion rate of any post when the army published its statistics covering the mid-1820s, it also had the worst record when army-wide desertions reached their peak between 1830 and 1832.<sup>39</sup>

The Canadian frontier was a hotbed of desertion on both the American and British sides. Steinhauer, in identifying American trouble spots, also observed that desertion was particularly heavy from Hancock Barracks in Houlton, Maine (located within a short walk of the New Brunswick border) and that desertion noticeably increased during years when the post recruited new soldiers from the local community, since those men knew the area well and could draw on social connections to hide them or help them find a place in Canada. However, despite high desertion rates from U.S. forts on the Canadian border, contemporary commentary suggests that not all those deserters actually headed for Canada. Officers at border forts sometimes assumed that deserters were heading south to cities like St. Louis or New Orleans, or setting out for New

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<sup>39</sup> Skelton, *An American Profession of Arms*, 266; J.C.A. Stagg, "Soldiers in Peace and War: Comparative Perspectives on the Recruitment of the United States Army, 1802-1815," *The William and Mary Quarterly*, vol 57, no 1 (Jan 2000), 112-113; Stanley Siltan Graham, "Life of the Enlisted Soldier on the Western Frontier, 1815-1845," Ph.D. diss. (University of North Texas, 1972), cited in Skelton, *An American Profession of Arms*, 423 fnnt 13; Dale Richard Steinhauer, "'Sogers': Enlisted men in the U.S. army, 1815-1860," Ph.D. diss. (University of North Carolina at Chapel Hill, 1992), 218.

York. They believed some were attempting to return to their home communities while others might try to vanish into the large American population. While British officers tended to assume that almost all deserters were heading for the United States, American officers thought some of their own missing men were looking to make a fresh start somewhere else within their own country. While the U.S. army desertion rate was higher than the British army's, in actual numbers British cross-border deserters certainly exceeded their American counterparts, particularly in the antebellum period when the British kept the border much more heavily manned than the Americans did.<sup>40</sup>

Just as differences in region affected soldiers' experiences, so too did differences between the various military stations. Montreal and Quebec incorporated their resident garrisons into their urban life in ways that set them apart from the smaller and more isolated Canadian forts that the British referred to as "frontier" stations. In Montreal, soldiers' duties included public parades and ceremonies as well as riot prevention during political elections and more everyday policing. In Quebec, troops performed the daily ritual of the changing of the guard outside the Parliament buildings; participated in local music, theatre, and sports; and maintained large barracks and fields for drill exercises in Upper Town. In both cities soldiers were a common sight on the streets amid the variety of civilian residents, and every night after sundown soldiers could roam as they pleased until 9 or 10 p.m. Soldiers rotated through the different posts, however, so those in the cities eventually moved on to smaller forts closer to the border. Some frontier stations were as small as a single blockhouse, while others could contain several hundred troops within their wooden pickets. Some garrisons were attached to growing western

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<sup>40</sup> Regarding desertions and local recruits in Houlton, Maine, see Steinhauer, "'Sogers'," 219. Examples of American officers on the northern borderland who assumed their deserters were heading to other U.S. cities rather than to Canada can be found in the Jacob Kingsbury Papers at both the Burton Historical Collection, Detroit Public Library and at the New York Historical Society.

cities, such as York (modern-day Toronto) and Kingston, while others remained in less developed areas.<sup>41</sup>

A former British officer, Lieutenant Burrows Willcocks Arthur Sleigh, recalled the material differences he and his men experienced when moving from Montreal to a smaller post in the Richelieu Valley during the mid-1840s. Montreal he described lavishly, impressed by the wealth on display. "Handsome equipages, with liveried servants, dash along the streets, while well dressed ladies, *à la Parisienne*, give an air to the favourite promenades of a fashionable and opulent people." The pomp of Montreal's civilian culture was mirrored by its military displays, as "the regiments in garrison mount guard and troop the colours, in the Champ de Mars, an extensive parade-ground in the heart of the city, surrounded by rows of old poplars." In such stately environs this officer commented approvingly that "in Montreal, you cannot fancy you are in America."<sup>42</sup> [see Figure 1.4]

By contrast, when moving south to the smaller post at St. John's on the Richelieu River, which he acknowledged as the most comfortable and well-designed of the border stations, he encountered more rustic and isolated conditions. The soldiers had their necessary barracks, cook-house, and parade ground within the square of pickets, and even had certain luxuries including a library and "a tastefully laid-out esplanade, with gardens and shrubbery, running down to the banks of the river." The library was part of a required program mounted by the imperial government that aimed to reduce desertion by providing an approved collection of books for the enlisted men to serve as a healthy form of entertainment. Other amusements were

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<sup>41</sup> Elinor Kyte Senior, *British Regulars in Montreal, An Imperial Garrison, 1832-1854* (Montreal: McGill-Queen's Press, 1981); Christian Rioux, "The British Garrison at Quebec, 1759-1871" (Parks Canada, 1996).

<sup>42</sup> Burrows Willcocks Arthur Sleigh, *Pine Forests and Hacmatack Clearings; or, Travel, Life, and Adventure, in the British North American Provinces*, 2<sup>nd</sup> edition (London: Richard Bentley, 1853), 239-240.



**Figure 1.4:** British troops drilling on the Champs de Mars in Montreal circa 1830<sup>43</sup>

few, since according to Sleigh the local town “consists of one long straggling street running parallel with the river... the houses are wooden, with a few exceptions, and on the outskirts are built of logs; the streets are knee-deep in mud, with no lamps, and a planked pathway, here and there interspersed with ankle-spraining crevices.” The shift from urban center to frontier village was palpable and may have influenced the fifteen men who quickly chose to desert. However, most were either caught by the provincial cavalry that patrolled nearby or voluntarily returned to surrender themselves. The seven who surrendered were informally disciplined by their commanding officer, while the six who had been arrested were court martialed. The highest absolute numbers of desertions came from the places that brought the largest concentrations of

<sup>43</sup> Robert Auchmuty Sproule, “View of the Champs de Mars, Montreal,” 1830 print, gift of the Estate of Mrs. Graham Drinkwater, M21762, McCord Museum. Accessed May 1, 2016.

troops together – well-developed cities – but desertions plagued frontier stations at higher rates and went sometimes only half reported.<sup>44</sup>

On the American side most forts were lightly manned (often with 50 to 100 men, or less) and more closely resembled Canada's frontier posts rather than its urban garrisons, though some American borderland soldiers had access to growing urban centers like Buffalo and Detroit. The high desertion rate at Niagara was encouraged by its very near proximity to the Canadian shore, standing as it did within sight of the British Fort George and, later, Fort Mississauga. However, deserters who tried to swim the river sometimes paid a heavy price. According to one British Parliamentary report, 150 drownings occurred in various Canadian waterways between 1817 and 1836 and the majority of victims had been deserters who failed to make the crossing in one direction or the other. The most consistently manned U.S. post, Fort Mackinac in northern Michigan, remained throughout the time period a village that fluctuated in size according to the seasonal rhythms of the fur trade.<sup>45</sup>

Comparing the working and living conditions of British soldiers in Canada to those of American soldiers in the United States, American soldiers came out ahead in several respects. Their terms of enlistment were significantly shorter than the terms offered by the British army, with U.S. peacetime service commitments holding first at 5 years and then 3 years. The British terms shifted over the 19<sup>th</sup> century, with early recruits asked to commit for life or for 14 years, while later reforms created options for 12 year or 7 year stints. American soldiers were also paid more than the British, though both armies frequently went months without receiving their pay.

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<sup>44</sup> Sleigh, *Pine Forests*, 241-244, quotes on 241-2; Burroughs, "Tackling Army Desertion," 54-57; Whitfield, *Tommy Atkins*, 102-110, 170-182.

<sup>45</sup> For tables tracking U.S. troop strengths at the northern frontier posts over time, see Schweninger, "Lingering War Must Be Prevented," 63, 65, 121, 164, 204, 249, 273; Burroughs, "Tackling Army Desertion," 32, fn 6; Keith R. Widder, *Reveille till Taps: Soldier Life at Fort Mackinac, 1780-1895* (Mackinac Island, MI: Mackinac State Historic Parks, 1972).



On paper, the U.S. a private's monthly salary started at \$5 during the late eighteenth century and grudgingly inched up to \$7 by 1860, though historian Edward Coffman found that in practice it fluctuated between \$3 and \$7. This wage rate left him behind contemporary unskilled laborers, but he remained ahead of the enlisted men of the neighboring army and in the antebellum era he also gained legal immunity from his pre-existing civilian debts. On paper British privates received a moderately generous bounty when they enlisted, but it was almost entirely swallowed by the cost of their clothes and other necessities, which were deducted from their pay. Carol Whitfield noted that "In 1813 a soldier's basic pay was one shilling a day with an extra 10d. a day if he was sent on a working party, while common labourers in Halifax were earning between 4s. 6d. and 5s. a day." British corporal punishment was also more excessive than American discipline, with sentences of 1,000 or more lashes routinely carried out in Canada while for most of the period military law capped American sentences at 50 lashes (though these legal provisions were sometimes ignored by abusive officers in both armies).<sup>46</sup>

These factors all contributed, not only to British desertion rates from Canada, but also to the discourse surrounding them that focused attention on soldiers' temptation to pursue better conditions of life in America. Yet that discourse, in both British and American hands, did not discuss the ways in which specific conditions of service in the U.S. army might compare favorably to those of the British army. Those who believed in American advantages dwelled on the U.S. political system and civilian job market rather than on its military regime, the conditions of which were little known and less respected. The following chapter will delve into the rich and understudied writings of deserters, officers, and observers who described their views of army life

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<sup>46</sup> William Skelton, *An American Profession of Arms*, 267-273; Edward M. Coffman, *The Old Army*, 15-16; Whitfield, *Tommy Atkins*, 59-60; J.R. Dinwiddy, "The Early Nineteenth-Century Campaign against Flogging in the Army," *The English Historical Review*, vol 97, no 383 (April 1982), 308-331.

and offered contrasting explanations and justifications for borderland desertion. Their reflections were both personal and political as their competing characterizations of deserters' lives came to represent rival national claims about what constituted a good society.

## **Chapter Two**

### **Deserters in Writing: Patriotism, Prosperity and the Borderland**

This dissertation will explore a variety of perspectives on desertion, but when it comes to deserters themselves, an immediate challenge arises: they rarely recorded their own interpretations of their experiences in any depth. A few deserters, however, published memoirs of their own, and those centered in the U.S.-Canadian borderlands – Matthew Bunn’s tale of Indian captivity and William Beebey Lighton’s reflections on the British army and aristocracy – offer a rare opportunity for in-depth analysis of deserters’ personal approach to complex questions of morality and patriotism. The works’ separation in time, with Bunn’s first edition published in the 1790s and Lighton’s in the 1830s, invites attention to the ways that the intervening decades changed the frontier and shaped the experience of desertion across it. Yet continuities between these stories, particularly the authors’ shared awareness that they were vulnerable to cross-border kidnapping, act as reminders that the putative transition ‘from borderlands to bordered lands’ remained incomplete and unsettled. For deserters, the border’s meaning continued to carry dual valences of protection and potential threat.

Bunn and Lighton attempted to interpret the events of their lives in such a way as to evoke the sympathy and approval of their readers, and their narratives undertook the cultural work of justifying their desertions. As authors, they had to address potential concerns about the truthfulness of their accounts. They had to produce and market their books, framing them as tales of captivity and military adventure. As deserters, they appealed to public sympathy by presenting subversive interpretations of military crime and punishment, particularly flogging, shifting the shame of the ritual from its victims to its perpetrators. Drawing upon the different

vocabularies and images available to them, they dramatized the severe bodily suffering deserters endured in order to evoke horror and fascination. Their accounts navigated a shared North American and British culture that frowned on the perceived severities of army discipline and held the potential for sympathy with desertion, but their narratives also illustrated their culture's less flexible attitudes toward other types of crime. While they rejected their military obligations and decried their punishments, they could not do the same in regard to more material debts. They both treated economic obligations as legitimate and did not feel that their need to escape the army justified them in defrauding their creditors or stealing. The property crime that could become bound up with desertion was a source of shame that they accepted and internalized far more readily than their military or political crimes. Their communities responded to, and at times questioned, the self-justifications that Bunn and Lighton put forward.

Their works were part of a scattered but combative Anglo-American nationalistic discourse that sought to explain the desertion of British soldiers into the United States (desertion in the other direction was rarely a point of public concern or discussion). American commentators saw soldiers' desertion from Canada as a flattering sign of their country's superior liberty and prosperity, while the British viewed their deserters as unwitting fools led astray by Americans' false promises. The chapter brings Bunn and Lighton's memoirs into conversation with the writings of other deserters, soldiers, and British officers who penned descriptions of Canadian deserters' lives in America. Together, these writings explored and contested the idea that the prospect of prosperity in the United States could legitimize the flight of British soldiers from Canada. In this debate the material success or failure of deserters who crossed the border took on symbolic weight, as did the question of a soldier's willingness to fight against his former country. Observers wrote as if the lives of individual deserters could prove or disprove each

society's claims to superiority, a perspective that gave deserters' own writings a more than merely personal significance.

*Bunn and Lighton: An overview of their works*

Matthew Bunn's memoirs have received little scholarly attention, in part because, when classed primarily as a North American Indian captivity narrative, Bunn's work does not look particularly remarkable. The genre had been long established by the 1790s, and the many extant narratives of greater ethnographic interest, religious fervor, contemporary popularity and literary accomplishment made Bunn's work seem middling or minor in comparison, though the rarity of its surviving editions did ensure that it was carefully preserved, reprinted and included in library collections. However, in addition to being a captivity narrative, Bunn's memoirs represented the published personal reflections of an enlisted soldier. Viewed as such they become instantly notable, since at the time few soldiers below the rank of commissioned officers published autobiographical reflections of any kind. Bunn's writings constitute an early example in both British and American literature.

Military historians, however, have also overlooked them. Perhaps this is because they contain no accounts of battle; perhaps because the work is classed as American and yet the army experiences described within are British; perhaps because army desertion has not been a major focus in the scholarly field. Nonetheless, Bunn's memoirs deserve more thorough analysis. Their rarity in capturing the voice of a late eighteenth-century enlisted soldier (twice enlisted, in Bunn's case, in both the American and British infantries) should accord them more general interest. For our purposes, they highlight the processes through which an American who first

entered and then deserted the British forces could appeal to the public for recognition of his patriotism and sympathy with his sufferings.<sup>1</sup>

William Beebey Lighton's much longer and more polished desertion memoir has received even less scholarly attention. As a work of autobiography its status is less unusual than Bunn's, since by the 1830s it was becoming more common for enlisted men to publish their army experiences. It may have fallen into the gaps of military historical scholarship in part because its action is set entirely during peacetime. Like Bunn's work, it is an American publication that describes British and Canadian, rather than American, army life. Yet Lighton's memoir deserves attention for its elaborate presentation of a deserter's perspective on the morality of his military crime and his shifting national allegiance. It also offers unusual opportunities to evaluate the work's reception among its contemporary readers, since Lighton recounted arguments he had with spectators and readers during his book tours. He also gathered testimonials from those willing to recommend the memoir with moral approval. His work allows us to overhear fragments of personal and community debates over desertion that are otherwise difficult to recover.<sup>2</sup>

The creation of an international border between Canada and the United States opened new opportunities for deserters to inscribe their actions with patriotic meaning and develop a rhetoric of self-justification. The boldness of Bunn and Lighton's self-presentations becomes

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<sup>1</sup> The Newberry Library reprinted the first 1796 edition: Matthew Bunn, *A Journal of the Adventures of Matthew Bunn: First published at Providence, Rhode Island, in 1796. A facsimile of the copy in the Everett D. Graff Collection*. (Chicago: Newberry Library, 1962). The *Journal* was also curated as part of the Garland Library of Narratives of North American Indian Captivities at Cornell. Bunn's publications are not unknown to borderland scholars. They have appeared in the bibliographies of major works, such as Alan Taylor's *Civil War of 1812*, but have not been analyzed except in the context of the Indian captivity narrative. For greater context on the historical and literary developments of military memoirs, see Neil Ramsay, *The military memoir and romantic literary culture, 1780-1835* (Burlington, VT: Ashgate Pub. Co., 2011).

<sup>2</sup> William Beebey Lighton. *Memoirs of the Life of William Beebey Lighton: [Minister of the Gospel.]* (Wells River, VT: White & Clark, 1835.) For one of its few citations in academic scholarship, see Peter Burroughs. "Tackling Army Desertion," 32, fn1 6.

apparent when compared to the account of a deserter who fled from Canada to the United States before the border between them was created. Historian Don Hagist has uncovered a brief first-person deserter account that predated both Bunn and Lighton's narratives: British private Valentine Duckett fled from Nova Scotia to New England, and his self-condemnatory "Dying Speech" circulated Boston in the form of a broadsheet in 1774. Duckett's confessional followed the conventions of its genre as, in the brief hours before his execution, he sought to prove his reformation by morally denouncing his desertion as one of "many atrocious actions" for which he deserved to die. Representing his desertion as a first step into a wider career of robbery and debauchery, Duckett portrayed himself as a man of weak character misled by the Devil but, at the last, repentant. He likely hoped for mercy from God and pardon from the army if he affirmed the justice of their judgments against him. However, he was shot to death at the age of twenty-one, after having deserted twice. Duckett's desperate narrative acquiescence to the army's official view of his crime did not save him.

Bunn and Lighton, having benefitted from the new protection the border offered them, succeeded in deserting where Duckett had failed and wrote in a radically different style that called on the public to join them in denouncing the British army's brutal approach to deserters (while silently overlooking similar practices in the U.S. army). Even in Duckett's case, evidence of a sympathetic potential audience for such counter-narratives was already evident.

Townspeople who had lived through the Boston Massacre had little sympathy for the British army's ideas of discipline. A local citizen who attended Duckett's execution wrote that, though British officers staged his shooting to terrify the remainder of their men into good behavior, "I imagine it will have a quite contrary effect (unless they are lost to all sense of humanity) and

create in them an utter detestation to remain subordinate to a set of men, who were instrumental in committing such an unjust act of cruelty.”<sup>3</sup>

Rather than casting himself as a villain, repentant or otherwise, Matthew Bunn placed the British and Native Americans firmly in that role. Bunn portrayed himself as a loyal American, highlighting his patriotism from his memoir’s opening sentence. He described a proud heritage: his father died fighting for the American Revolution. Bunn went on to join the U.S. army himself in 1791, at the age of nineteen, accompanying St. Clair’s forces on their journey west to confront warring Native Americans. After roughly two months of marching and fort building, Bunn found himself captured by a Delaware scouting party when he wandered away from the fort to hunt game. For the following seven months he did drudge work for his Delaware ‘master’ and suffered privations of food and clothing in addition to taunting and physical beatings. Although he contemplated attempting to kill his captors, he eventually escaped without violence and sought help among the French and British traders who lived in Indian territory. Almost all of them turned him away, but eventually with the help of one sympathetic trader he reached British Detroit. There ended his initial memoir, which he published in 1796.

The theme of its sequel, published the following year, was savagery – specifically, white savagery. He rebuked the British for coercing him into their army and related his attempts to desert while drawing condemnatory parallels between them and their Native American allies. Bunn claimed that the British at Detroit encouraged Native attacks against Americans and he found, to his cost, that they were uninterested in providing him protection from his former captors. He was disillusioned, having previously assumed that the British “deserved the character of being humane.” One sympathetic trader ransomed him before he was carried back into

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<sup>3</sup> Don N. Hagist, *British Soldiers American War: Voices of the American Revolution* (Yardley, PA: Westholme, 2012), 77-97, quotes from 84, 96-97.



captivity. Bunn bound himself as an indentured servant to this trader until he had paid back his ransom, and while he labored he remained in British territory voluntarily, though still considering himself a loyal American. His outspoken political allegiance to the United States inflamed local outrage. Threatened with impressment onto a British warship, Bunn chose the lesser evil of enlistment into the British army at Niagara. He attempted to desert and was punished with five hundred lashes. Ultimately he successfully deserted a second time and made his return to New York, and from thence to Rhode Island, where within a year he began publishing his experiences in print.<sup>4</sup>

Bunn presented his suffering in the British army as a continuation of the torments of his Indian captivity, eventually illustrating the point in material form by combining both halves of his narrative into an unbroken volume for its later editions. He noted little difference “in morals, manners and practice, between the white savages to whom I was then a slave, and the red savages from whom I had so lately made my escape. To avoid the fetters of both was my determination.” Thus, for Bunn, desertion constituted a liberation from captors who could have neither moral nor legal claim on him and who themselves violated the basic protections due his humanity.<sup>5</sup>

William Beebey Lighton’s memoir, unlike Bunn’s, described a change in national allegiance. Lighton, a young Englishman who was unhappy at home and unable to find decent work, enlisted for life in the British army at the age of fifteen and quickly came to regret his haste when exposed to the endless drudgery, poor provisions, and harsh discipline of the service.

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<sup>4</sup> Quotation is from Bunn, *A Short Narrative of the Life and Sufferings of Matthew Bunn, After his Arrival at the British Garrison at Detroit, at which Place he arrived the 30<sup>th</sup> of April, 1792, from his Indian Captivity; An Account whereof was lately published, entitled, “A Journal of the Adventures of Matthew Bunn, a Native of Brookfield, Massachusetts,”* &c. (No publisher listed, 1797), 2.

<sup>5</sup> Quotation is from Bunn, 1797 edition, 12.

Lighton wrote his autobiography as a moralistic series of reflections meant to dissuade young Christians from repeating his own mistakes. Looking back on his life in England, Lighton decried his youthful sinfulness in being disobedient to his parents. But in addition to this self-criticism, he mounted broader social criticism against the unjust economic hardships he had experienced and concluded that he had been coerced into the army by the tyranny of aristocratic government.

Sent overseas to Montreal, Lighton soon attempted to desert. He rode off on his officer's horse, but he was captured, tried for horse theft in a civil court, condemned to death, and reprieved to a prison sentence. Eventually he broke out of jail and fled deeper into Quebec. He successfully crossed over into Vermont in 1826 and eventually established himself as a local Methodist preacher, married, and inherited a farm. After nearly ten years he published a memoir of his experiences. After nineteen years, he wrote a second half to his story, describing his visit home to his family in England and his apprehension that, even after so much time, he might still be recognized and seized as a deserter. Lighton's memoir contrasted with Bunn's in its religiosity and in the depth of its social critique. Lighton portrayed desertion as his blessed deliverance from Britain's unjust martial and civil institutions.<sup>6</sup>

### *Traversing the borderland through deserters' eyes*

Certain contrasts between Bunn's and Lighton's writings highlight long-term social, political, and religious changes that unfolded along the Canadian frontier between the 1790s and the 1830s. The most immediately striking discontinuity is that Lighton's memoir made no

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<sup>6</sup> Matthew Bunn's account is independently corroborated by British army records. I have not yet located any British army records to corroborate William Beebey Lighton's account. For Matthew Bunn's enlistment, see "Muster Roll of His Majesty's Regiment of First American or Queen's Rangers for 182 Days vizt. From the 25<sup>th</sup> of December 1793 to the 24<sup>th</sup> of June 1794 (both days inclusive)," WO 12/11035, page 191, The National Archives, Kew, England. For his first desertion, see the Queen's Rangers' muster roll for June 25, 1794 to December 24, 1794, *ibid*, page 10; for his second desertion, see the muster roll for December 25, 1794 to June 24<sup>th</sup> 1795, *ibid*, page 100.

mention of Native Americans associating with the British or representing a potential threat to deserters. For Bunn, and many other deserters from both armies during the wars of the early 1790s and the War of 1812, Native Americans represented the pre-eminent deterrent to desertion, and the British consciously advertised their ‘savage’ reputation to increase soldiers’ terror of being captured, enslaved, tortured or scalped should they dare to abandon their regiments. When Bunn deserted the British army at York (modern day Toronto) and had to make his way through the forests lining the shores of Lake Ontario, his fellow soldiers warned him that “it was morally impossible to avoid being taken up by the Indians, who were nearly as thick in the woods as mosquitoes.” The widespread presence of Native Americans kept him under constant threat of discovery – he feared being tracked by their hunting dogs – yet Bunn ultimately found his near-encounters with Native Americans useful in his escape as well, as he was repeatedly able to steal unattended canoes to speed his journey. However, Native Americans on both sides of the border suffered severe military, diplomatic and material reverses over the intervening decades, and after the War of 1812 they no longer worked closely with the British military, though at times they still participated in capturing deserters for the sake of the monetary bounties offered.<sup>7</sup>

Canadian desertion was also shaped by the borderland’s dramatically varied cultural geographies. By the time Lighton deserted in the mid-1820s, he viewed ordinary civilians rather than Native Americans as his primary threats, and his desertion experience played out far to the east of Bunn’s where the influence of French habitant culture presented him with different opportunities and challenges. After Lighton’s first failed attempt to desert, he was imprisoned in

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<sup>7</sup> Alan Taylor. *The Civil War of 1812*, chapter 8. For contemporary references to Native Americans hunting deserters, see, for example, *The Patrol* (Utica, NY), 8/21/1815, 3; *Baltimore Patriot & Evening Advertiser*, 9/30/1814, 2; “Statement of Richard Robison,” E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 418-19. Quotation is from Bunn, 1797 edition, 11.

Quebec City, but eventually he and his friend, a French doctor, broke out of jail. They decided to travel east further into Quebec, because “there was no news in circulation that way, and because our pursuers would not suspect us of taking that rout; but would naturally suppose we had gone towards the United States.” Lighton expected that a reward would be advertised for their capture, but he believed the paucity of French-language newspapers in the province reduced the chances that they would be caught by such means. However, once he found employment as a laborer with a French family, he was dismayed to learn that their son spoke fluent English and brought home newspapers from Quebec City that the family encouraged him to read aloud.<sup>8</sup>

Hoping to vanish among a population he expected to find illiterate and isolated, Lighton encountered instead a community that was connected to the work and news of its nearest urban center and also demandingly inclusive in its religious rituals. Lighton was stymied by his employer’s insistence that, as part of the household, he must accompany the family to the parish’s Catholic mass each Sunday. In addition to the religious reservations about Catholicism that had been intrinsic to his Protestant upbringing, Lighton was alarmed at the unwelcome visibility that church attendance forced on him. Although the community of St. Joachim was thirty miles distant from the prison of Quebec City, Lighton spotted a prison employee and a former prison inmate in the congregation, and also feared encountering familiar priests whose charitable visits to the jail had made them acquainted with him. Several of these priests owned the land that his employers farmed and might visit unannounced at any time. Lighton stayed for less than six weeks before deciding that he must flee to the United States or else inevitably be recaptured.<sup>9</sup>

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<sup>8</sup> Lighton, 1835 edition, 189-190, 200-201; quotation on 190.

<sup>9</sup> Lighton, 1835 edition, 199-205.

Bunn's desertion experience was shaped by the developing political conflicts of the pre-1812 era, particularly the threat of impressment and the question of whether national allegiance could be compelled. One of the ideological points of contention between the British and the Americans was the question of whether the British king had the right to compel allegiance and service from those who did not acknowledge his sovereignty over them. When Matthew Bunn was working near British Detroit as an indentured servant to pay back the debt he had incurred after being ransomed from his Indian captivity, he stumbled into a hotbed of local nationalistic performance. One night, a group of laborers who had gathered for a barn-raising began drinking and making toasts. Some in the group were Americans who had recently moved to British territory and sworn loyalty to the British king in order to cash in on the generous land grants the Upper Canadian administration was then offering to immigrants. Bunn found their willingness to renounce their native loyalty distasteful, but he misunderstood the importance that others would attach to his own casual disavowals.

One of my countrymen drank an health to the King, and damnation to Washington, in order to ingratiate himself into the favor of his Majesty's subjects, and demonstrate his loyalty to the crown of England, as I supposed. I was moved by the insult, and to retaliate, drank a health to Washington, and damnation to the King. Henry Boochford immediately accosted me thus, do you damn the King? Supposing him to be in a merry humor, and not in earnest, I repeated my words. He again said, what, do you damn King George? I replied I did, for what was the King to me? ....[A]t length the dispute subsided, and I expected that a good nights rest would've settled the matter; but...by and by I was visited by a civil officer, with a warrant to apprehend me, which he did, and informed me that I was indicted for high treason.<sup>10</sup>

Bunn's trial investigated the nature and limits of the allegiance a sovereign could demand of an American who had been brought captive to his territory. The local jury initially seemed to

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<sup>10</sup> Bunn, 1797 edition, 7-8.

uphold Bunn's view that simply living and working on British land did not make him the king's subject and that he could not be convicted of treason. However, the jury also concluded that a person with no loyalty to the government could no longer be allowed to live among them and determined to exile him. Unwilling to pass him back to the Americans who would soon be re-establishing control over Detroit, they sent him hundreds of miles east to Governor Simcoe in Niagara. The governor, hearing his case, informed him he was going to be impressed into the Royal Navy and sent to war, "saying that what I have been guilty of gave them the undoubted liberty of disposing of me as they pleased." It was in order to avoid naval impressment that Bunn joined the British army instead, feeling that his prospects of eventual escape would be much better if he managed to avoid being shipped into an overseas war. Like many other Americans in the pre-1812 era, Bunn found that his citizenship could not protect him from the demands of the British military.<sup>11</sup>

Bunn constructed his understanding of his own patriotism around the principle that a shift in native-born allegiance could never be forced, and that his presence on British soil and his enlistment in the British army were both achieved through coercion and therefore could not serve as legitimate grounds to demand his loyalty. He attempted to desert, but was recaptured. He appealed to his superior officers in the hope of ameliorating his punishment:

I reminded the officers that I was an American born; that it was impossible for me to forget my country and my parents; that I was not to blame for coming amongst them, fortune having directed me there; and had fortune favored my escape, I should have been rid of their persecutions, which was worth trying for. I owned that I enlisted, but not voluntarily; it was choosing the least of two evils. The officers heard what they pleased of my harangue, paying me but little attention during the whole of it.

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<sup>11</sup> Bunn, 1797 edition, 9-10.

Bunn's arguments did not carry much weight with the British authorities, but they reflected some of the central Anglo-American tensions of the era and the confusion surrounding the central terms of debate. Was native-born loyalty inalienable, as the British contended, or should changes in citizenship be a matter left to the citizen or subject's choice rather than that of his sovereign, as the Americans argued? Bunn appealed to both ideals. He imagined his American identity as an inborn quality he had received from his parents and he considered it inalienable ("it was impossible for me to forget"). However, he also emphasized that he had made no free choice to enter Canadian territory or the British army. His argument implied that had his enlistment been voluntary it might have carried legitimate moral weight, but since it had not been voluntary he could not fairly be held to its terms. Bunn's casual combination of different conceptual models of national allegiance reflected the intellectual messiness of the wider international debate.<sup>12</sup>

Just as Bunn's formulation of patriotism had been influenced by the pre-1812 political milieu, Lighton's patriotism reflected elements of Jacksonian political culture as well as the Methodist camp meetings in which he was personally immersed. He justified his shift of allegiance from Britain to America by mounting a critique of Great Britain that resonated with the language and values of religious and political democratization. Like Bunn, he affirmed that patriotic allegiance could not simply be compelled and he expressed particular hatred for economic coercion and injustice. He felt that he had been forced into the army under poverty's duress, and therefore bore no real obligation to remain in service. "Seeing no other prospect of

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<sup>12</sup> Bunn, 1797 edition, 20-21. The British were inconsistent in their claims about inalienable natural-born allegiance, since they incorporated foreigners into their own kingdom and militaries. They also recognized an individual's political choices and behaviors as legal marks of his allegiance during this era in the context of admiralty courts that adjudicated prize claims resulting from wartime privateering. Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge: The Belknap Press of Harvard University Press, 2015).

escape from starvation, I resolved once more to try my fortune at enlistment; not from choice, but stern necessity.”<sup>13</sup>

Lighton believed that those whom penury forced into the army could not be expected to honor their allegiance to the social institutions that oppressed them, and he maintained that widespread poverty in Britain had been artificially and unjustly imposed by their aristocratic, monarchical government. He saw the “goaded policy of maintaining a standing army,” especially one that served overseas, as the means of destroying homes and marriages, and leaving suffering wives and children abandoned. The language of his social critique was strongly politicized.

Such are and must be the results of a form of government which elevates hereditarily one individual over the mass, and fosters a supercilious, pampered aristocracy whose study is to amass wealth on the groans and sweat of those they term the lower class...and until the democracy learn to assert their just rights by demanding a more equalizing code of legislature, it will be the misfortune of every nation, trampled down by monarchical rule and its attendant evil, a licentious soldiery, to grope along the thorny road of ignorance, poverty and vice.<sup>14</sup>

He characterized his desertion as a flight from tyrannical oppression and a defense of his own sense of inward identity, which was growing painfully “slavish” under the constant threat of his superior officers’ abuse. Living under the arbitrary severities of the men placed above him, “[m]orbid fear works the intellect, cramps the energies, and paralyzes the powers, until every principle of liberty and action become...mildewed and rusty.” He felt he was losing his character as a free man, and having enlisted for life, considered there was “little chance of any mitigation of my condition, and no prospect of being freed from my military servitude, except by death.”

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<sup>13</sup> Lighton, 1854 edition, 35.

<sup>14</sup> Lighton, 1854 edition, 54.



Thus he characterized his desertion as a return to “liberty and comfort in civil life.” It represented his rebirth as a citizen.<sup>15</sup>

That rebirth, however, was not a secure one, even after Lighton had been settled for years in America, since he feared cross-border kidnappers might try to drag him back to Canada. Lighton knew that while he was “living within fifty miles of the line separating the two countries, and remote from neighbors,” he might easily be vulnerable to a raiding party “of lawless men in Canada [who] were intending to seize me under cover of night, and carry me away to deliver me up to the government.” As a recognized sovereign dividing line, the border afforded deserters immunity from the military law they had flouted, but were they to be recaptured and physically carried across the line before American friends or authorities could intervene, then their kidnappers would benefit from the same practical legal immunity. Lighton feared that “before my family could alarm them my captors would be far on their way, with defiance in their rear.” Lighton lived with this fear in the 1830s, illustrating that even socially relevant, politically established, historically ‘permanent’ borders could remain unstable borderlands in the lived experience of vulnerable residents.<sup>16</sup>

*Deserters as authors: strategies for cultivating public interest and sympathy*

The chronological and geographical distances between Bunn and Lighton shaped their desertion experiences differently, but in conveying those experiences they shared the common challenge of establishing themselves as legitimate authors. Autobiography was a developing, unstable genre from the end of the eighteenth century through the first quarter of the nineteenth, and ordinary middle or working class people who published reflections on their own lives faced

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<sup>15</sup> Lighton, 1854 edition, 78-79.

<sup>16</sup> Lighton, 1854 edition, 181.

potential moral criticisms. Bunn and Lighton adopted socially acceptable means to acknowledge the financial motives behind their books by presenting themselves as figures worthy of charity. Bunn seemed to comfortably reconcile his roles as instructive author and charitable object. His work drew on the artistic and literary tradition of the ‘poor soldier’ in which veterans foregrounded their ruined bodies, frail health, and unavoidable indigence. In the preface to his first edition, Bunn introduced himself as an author who, “having been deprived of his Health, so that he is illy able to do work sufficient to maintain himself, requests the Assistance of the charitably disposed, in forwarding the sale of this [P]ublication.”<sup>17</sup>

Lighton, on the other hand, made no claims to physical debilitation nor any appeal to charity in his own voice. Instead he filled the opening pages of his book with signed testimonials from Methodist and Baptist ministers, town selectmen, and eventually also the Governor of New Hampshire, attesting to his financial need. They asserted that, through no fault of his own, he had been swindled by a debtor and left without means to support his family. Regarding the content of his story, they assured the public that it was good family reading and “cordially recommend it to the attention of every *parent* and *young person*, as a work calculated to invite the attention, and benefit the hearts of its readers.” As Lighton published new editions over the years, he announced changing goals for the money his sales raised. In the early 1840s he altered the testimonials to express his new goal of purchasing his discharge from the British army (thereby removing himself from the state of desertion) and funding a return trip to England to visit his family. In his final editions Lighton felt comfortable acknowledging that his financial interests in bookselling were no longer compelled by necessity. Bunn, however, reiterated his

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<sup>17</sup> Stephen Carl Arch, *After Franklin: The Emergence of Autobiography in Post-Revolutionary America, 1780-1830* (Hanover and London: University Press of New England, 2001); Neil Ramsay, *The Military Memoir*, 123-126; Bunn, 1796 edition, 2.

reliance on charity even in his last editions, urging readers to contribute “some pecuniary aid towards the support of a numerous family,” that he was unable to provide for given the “hardships and sufferings to which he has been subjected, having broken down his once vigorous constitution.”<sup>18</sup>

Their books’ material presentation paralleled the authors’ diverging financial status. Bunn’s publications remained cheap and unembellished. Bunn printed his first editions quickly, probably in very small runs, and traveled on a circuit through eastern New England peddling them. In the mid-1820s he reissued his work, but these later editions were still shoddily made. In the early twentieth century an auction company assessor said of Bunn’s material, “It is not surprising that the edition of 1826 (with one exception, so far as is known) utterly disappeared, because it was printed on the cheapest kind of paper; undoubtedly the edition was very small, and as it was an exciting Indian story, it must have been thumbed to pieces in a short time.” If Bunn did not invest much money in the books’ production, neither did he invest time in re-editing or expanding the text. Although he published his editions sporadically over the course of more than thirty years, he made very few alterations to them. In response to readers’ questions, he supplied a few new details about what happened to individuals he had mentioned in the story, and he changed a few dates, including the date of his escape from the Indians, altering it from 1792 to 1793 and thus extending his alleged time in captivity. His final editions also added the patriotic song he had written to commemorate St Clair’s defeat. These minor alterations were apparently all that he could afford.<sup>19</sup>

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<sup>18</sup> Lighton prefaced his editions from 1836 to 1843 with testimonials, increasing his collection from 18 to 60 signatories; Bunn, 1828 seventh edition, 2.

<sup>19</sup> William Holland Sampson. *Important Collection of Americana from the Library of W.H. Samson ...: Including Many Rare Indian Items, State and County Histories, Early Western New York Books, Pamphlets and Maps, and an Extra Ordinary Collection of Anti-masonic Literature with ... Some ... Early Views of New York ...* (New York: Anderson Auction Company, 1911), 39-40. Accessed through Google Books.

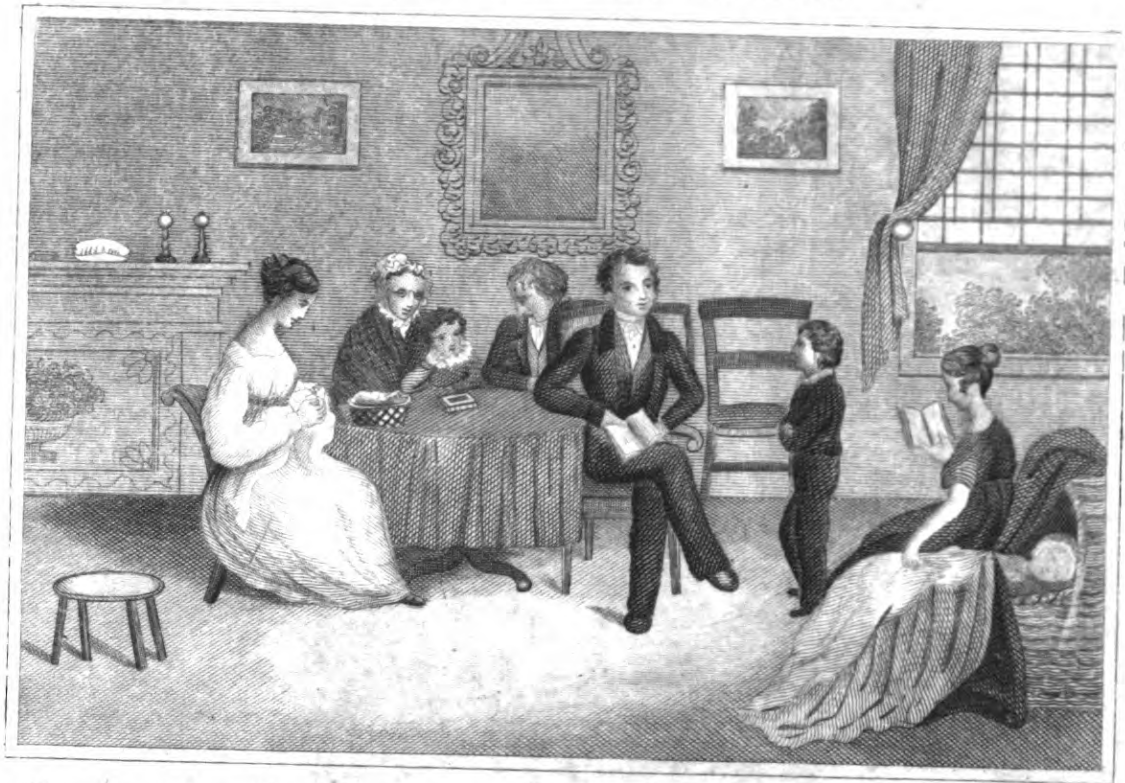
Lighton, in contrast, transformed his books over the years in ways that increased their attractiveness to prospective buyers and reflected his improved material resources. He commissioned a set of eight illustrations for his second edition in 1836 that dramatized sentimental scenes of farewell, highlighted dramatic escapes and punishments, and emphasized his youthfulness by visibly portraying him as a boy rather than a man. Lighton substantially revised his text in 1840 and added a new second half to the memoir in 1854. He was an inveterate editor, rephrasing even minor passages repeatedly to improve their style, economy, and clarity. He invested in a second set of illustrations, ten steel engravings that provided lighter, clearer, and more detailed drawings when transferred to print. These illustrations eventually disappeared in his later editions, not by choice, but because he lost the steel plates in a fire.<sup>20</sup>

His commitment to improving the books' material presentation and his detailed attention to their textual content show that Lighton cared about the manner in which the books represented him. His social status was perhaps best encapsulated by the final illustration of his later editions, captioned 'Domestic Happiness,' that showed him presiding over a large family positioned within a tastefully decorated room [see Figure 2.1]. There was nothing too ornate for his Methodist aesthetics, but the reader might notice the candlesticks on the mantle, the landscape paintings on the wall, the books available for every family member, and the beautifully framed mirror. Lighton invested time, attention, and money into improving his books and they materially reflected his rising status. Lighton's prosperity was proof of his respectability and in turn increased his work's saleability.

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<sup>20</sup> Lighton used his first set of illustrations in 1836 and 1838, then deployed his second set for all subsequent editions until 1854. He reported the accidental loss of his illustrations' "stereotype plates," 1854 edition, 193.

## DOMESTIC HAPPINESS.



*Thus situated we lived in the most harmonious and happy manner, a perfect contrast to the misery of my former days*

P. 242

**Figure 2.1:** Illustration of Domestic Happiness from Lighton's memoir, 1846 edition

Both Bunn and Lighton initially marketed their books as captivity narratives. Lighton learned some quick and effective lessons about marketing between his 1835 first edition and his 1836 second edition, and he deployed the genre markers of the captivity narrative once he decided that his abuse at the hands of the British would be the book's key selling point. He designed a new title page with an elaborately descriptive teaser of the book's plot and new reams of self-description. Offering the public an account of his "life and sufferings," Lighton called himself a "young British captive." Normally, the captivity narrative genre led readers to expect stories about civilized, white people enduring some form of abduction, imprisonment or

enslavement at the hands of an uncivilized, racial ‘other,’ be it the Native peoples of continental America or the Barbary pirates of north Africa. Certainly Bunn’s captivity narrative fulfilled these basic expectations. But Lighton’s account contained no Native Americans, no kidnapping or enslavement, and his enemies were fellow Britons.<sup>21</sup>

Lighton carefully shaped his extended title, therefore, to apply captivity conventions to the terms of his service in the British army and thereby portray the institution as a bastion of white savagery in much the same way that Bunn had done in the 1790s. Rather than stating that he enlisted in the British army, Lighton wrote that he was “bound for life,” evoking enslavement. He promised to expose the uncivilized nature of the British by giving “an account of...the barbarous method practised in punishing their soldiers.” He avoided the term ‘desertion’ and described instead his “escape from his regiment,” keeping the army firmly cast in the role of his captor. He advertised further sensationalistic suffering in “his capture, imprisonment, trial, and condemnation to death.” And just as the traditional captivity narrative ended with a return to civilization, so Lighton promised a “final escape from captivity, and from the British Dominions.” In his title quotations, he assured his readers they would be enthralled and moved by his extraordinary suffering. “Who can refrain from tears at the relation of such things?” Lighton asked through the poet Virgil. Although the content of Lighton’s memoir lacked most of the traditional elements of a captivity narrative, Lighton used that genre to frame his story as an affecting tale of individual suffering and as an extreme critique of British culture. Through its army, the empire behaved so cruelly as to lose its civilized character.<sup>22</sup>

However, both Bunn and Lighton shifted away from the captivity genre over time, presumably because public tastes for the older genre were giving way to interest in newer forms

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<sup>21</sup> Linda Colley. *Captives: Britain, Empire and the World 1600-1850* (London: J. Cape, 2002.)

<sup>22</sup> Lighton, 1836 edition, title page.

of military memoirs and autobiographies. Bunn changed his marketing to stress military adventure and Indian war. In the 1820s he advertised his book as the story of a military expedition against the Northwest Indians over five successive years, although he had been in an armed expedition against the Native Americans for only two months before his kidnapping and had never participated in any major battles. Bunn also relied on inflated claims about his book's popularity. The title page of his 1828 edition claimed the narrative had sold 4,000 copies, a number too improbably high to be believed.<sup>23</sup>

Lighton also shifted his marketing style, first to that of a more straightforward military adventure story, and finally into autobiography with his sufferings appearing as but one element of his broadly interesting and successful life. Lighton claimed to be a "young British captive" for only a single edition of his book. Beginning in 1840 he added a supplemental illustrated title page, that showed a soldier in British uniform casually leaning on his musket, placed amongst picturesque scenery while a large ship came into harbor behind him. This image represented Lighton as a fresh recruit on the cusp of sailing to take up soldiering in Canada. The picture was captioned with a quote from Lighton's text: "While waiting on the shore for the boats – I employed my time in reviewing the diversified and chequered past." This combination of image and text quickly established the book as a martial tale and suggested possibilities of travel and adventure. By 1854, Lighton had eliminated from his title almost all of the language that had once marked the book as belonging to the captivity genre, returning to a simpler style to advertise his respectable "autobiography and reminiscences" while at last confidently referencing

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<sup>23</sup> The title Bunn used for his 1826 and 1828 editions was: *A Narrative of the Life and Adventures of Matthew Bunn of Providence, Rhode Island: In an Expedition Against the North Western Indians, in the Years 1791, 2, 3, 4, and 5*. "The title-page of the 1828 edition says – or seems to say – that 4,000 copies were printed. If that were true, one would expect "The Life and Adventures of Matthew Bunn" to be the commonest of the early books printed in Western New York. On the contrary, it is perhaps the rarest." Frank H. Severance, ed. *Publications* (Buffalo Historical Society, 1904), vol 7, 381.

his “desertion” in the book’s subtitle. As the antebellum American reading public became more accustomed to the first person writings of ordinary soldiers and citizens, Bunn and Lighton repackaged their work to attract new audiences.

In their efforts to become successful authors, Bunn and Lighton challenged many public prejudices about ordinary soldiers, but they did not see themselves as attempting to rehabilitate the reputation of soldiers as a class. Many veterans of the American Revolution, the Napoleonic Wars, and the War of 1812 began to write about their lives as a means of calling on the general public to recognize the sacrifices of ordinary soldiers and monetarily reward their service. Bunn and Lighton had no such sense of solidarity with their former comrades and no expectation that their writing might gain them a government pension. They were both enlisted men who called upon the public to respect them as authors and sympathize with them as deserters, but they also considered themselves as exceptional rather than as representative of the common soldiers who filled the rank and file of the army. Towards such men, they expressed disdain and estrangement.<sup>24</sup>

In this, they reaffirmed the prejudices of the general public who envisaged private soldiers as rowdy, worthless foreigners. Once enlisted, Lighton saw himself as being immersed in a mass of ethnic stereotypes, “the great Englishman, a hearty Scotchman, the thoughtless Irishman, the gay Frenchman, the sober German, the cunning Portuguese, the treacherous Spaniard, the musical Italian, and the boorish Dutchman – an assembly that made anything but a pleasing impression.” Similarly, Bunn claimed of the British regulars that “there never was a more vicious set of mortals collected from the four corners of the globe; they consisted of

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<sup>24</sup> Sarah J Purcell. *Sealed with Blood: War, Sacrifice, and Memory in Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2010); John Resch, *Suffering Soldiers: Revolutionary War Veterans, Moral Sentiment, and Political Culture in the Early Republic* (Amherst: University of Massachusetts Press, 1999); Ramsay, *Military Memoir*.



refugee English, Scotch, Irish, Dutch, and American cow boys,” with the only worthy characters being, like himself, “some poor American captives which were purchased of the Indians, and by some artful means forced into their army.” Lighton acknowledged that a few were decently religious, but regarded most as hardened sinners. Bunn concluded that “an honest soldier could as well live in the fire as to live with them.” Bunn and Lighton’s memoirs were complex and at times portrayed sympathetic individual soldiers as well as moments of wider comradeship in the face of shared abuse, but these authors nonetheless distanced themselves from the men with whom they served and built up their own respectability in contrast to their disreputable fellows.<sup>25</sup>

*Narrating shame and duty: subverting military crime, embracing property obligations*

As deserters, Bunn and Lighton sought to deny their military obligations and undermine the legitimacy of the punishment directed against them. They did this largely by using various artistic tools to convey the horrific pain that deserters suffered when whipped. By the 1830s, Lighton had well-established literary and rhetorical models that he could draw from to build a compelling portrait of the flogging scene, but Bunn in the 1790s had to weave together a more patchwork vocabulary. Bunn’s account of the severe flogging that he witnessed and endured was terse. After a failed desertion attempt, he and one of his companions were each sentenced to receive one thousand lashes. Although he stood watching while his companion was whipped, Bunn included no emotional or physical descriptions. He wrote simply, “He was accordingly tied up, received his punishment, and made out to live through it.”

Bunn then described his own flogging in the same concise style without initially attempting to paint a picture of his bleeding body or his own interior experience of pain. Emotionally, he dramatized his sense of resignation. “I bade the world adieu, and all my friends,

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<sup>25</sup> Lighton, 1854 edition, 63; Bunn, 1797 edition, 16.

having not the least expectation of being able to survive the awful trial.” But the moment of flogging itself Bunn passed over quickly. “They tied me up, and gave me five hundred lashes. The doctor standing by, ordered me to be released, telling them that I could endure no more at that time. I was accordingly taken down, but could not stand.” He did not give his readers many details from which to imaginatively and emotively recreate the scene. This may have been the hallmark of Bunn’s personal experience of trauma: he was beaten to insensibility, and his memories of the event may have been unclear. Furthermore, the abolitionist and army reform literature that would, in later decades, focus intense attention on the moment of whipping was not yet available to provide a model for Bunn’s recounting.<sup>26</sup>

However, Bunn was committed to conveying the tortuous pain of his martial punishment, and he did so by using both clinical and religious language to vividly recreate the aftermath of his ordeal. It was the agonizing period of recovery that he described in detail, and it was there that he recreated his suffering body for the reader. The terms that Bunn used to describe his experience were largely drawn from his interactions with his army doctor. His account of his wounded body offered a medical overview of his recovery process:

The doctor attended us very assiduously... for on cleaning my wounds, and removing the coagulated blood and mangled flesh (being so cut to pieces that my bowels were almost visible to the naked eye) I felt the most excruciating pains, which were increased by an inflammation which began to prevail...My wounded back then began a gentle suppuration, the pain and inflammation moderated, and the doctor began to be encouraged, telling me with a smile that he believed I might recover; which was more than he had expected two days before, as he expected that the inflammation would determinate in a gangrene.

Bunn was able to offer a visceral and detailed portrait of his suffering by recreating the language of the hospital for his readers.<sup>27</sup>

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<sup>26</sup> Bunn, 1797 edition, 21.

<sup>27</sup> Bunn, 1797 edition, 22.

Bunn also drew on the language of spiritual autobiography as he confessed that he contemplated suicide rather than face the remainder of his flogging. The style of his writing grew more confidently florid as he drew on literary techniques, including direct address, prayer, and stock phrases that suggest sermons and religious writings gave him strong models through which to interpret and emotively convey the experience of spiritual crisis.

O my dear friends and countrymen, think on my deplorable circumstances. Father of mercies, lend me your aid to endure what is thus inflicted upon me, and sanctify it to me for my everlasting good. After I had given thence to a flood of tears, my convulsed breast became more resigned to my fate, supposing my time of life to be short in this transitory world, and a life of endless duration soon to commence.<sup>28</sup>

When it came to dramatizing the horror of military punishment, Bunn rose to the challenge of conveying his physical and spiritual pain to his readers, which was one of the central concerns of his work. The passage excerpted above marked the only time he drew heavily on religious language – expressions of piety had been almost totally absent from his account of his Indian captivity. Their appearance here suggests that Bunn intended to portray this moment as the climax of his suffering. Although his style noticeably fluctuated as he drew on different kinds of rhetoric and descriptive terms, he successfully conveyed his torment as a kind of spectacle at which readers were expected to wonder as well as sympathize: “I suffered amazingly.”<sup>29</sup>

Lighton, writing in the mid-1830s and re-editing through the 1850s, had different sources of vocabulary and imagery from which to draw in order to dramatize corporal suffering and morally critique the rituals of military punishment. His experience as an evangelical preacher gave him a confidently emotive rhetorical style infused with religious allusions. Additionally, he

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<sup>28</sup> Bunn, 1797 edition, 23-24.

<sup>29</sup> Bunn, 1797 edition, 23.

may have drawn models for his descriptions of flogging from abolitionist literature or from the British anti-flogging campaign, both of which circulated publications widely by the 1830s. Having never experienced corporal punishment directly, Lighton positioned both himself and his readers in the role of horrified witnesses and presented the suffering of a tortured deserter as a spectacle “appalling in the extreme.” Lighton used vivid sensory descriptions, recreating in particular the sounds and sights of pain.

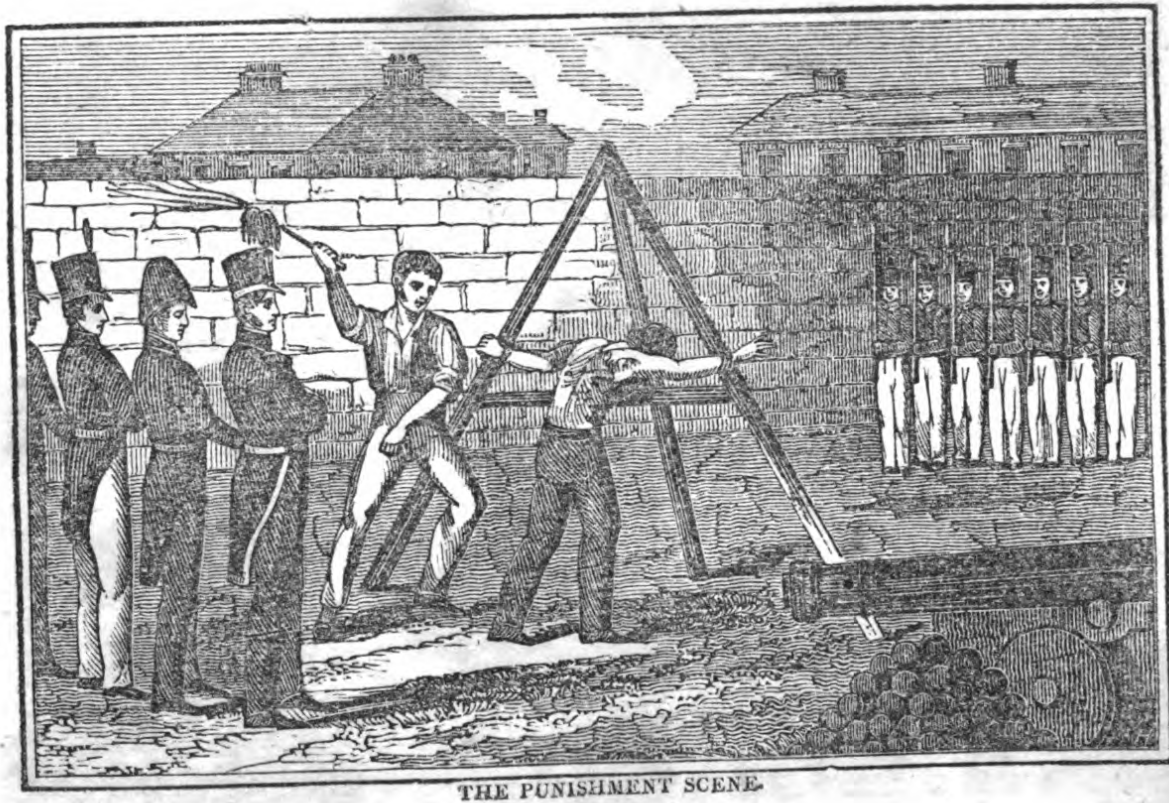
The first blow forces a deep groan from the hapless culprit; the first twenty-five bring blood; at the close of the first hundred the back is literally torn to pieces, and the warm-blood runs in copious streams to the ground! Sometimes the sufferer in the most suppliant tones begs for mercy; now his unutterable groans rend the air, and anon he howls for very agony; then he exclaims, like a second Cain, "my punishment is greater than I can bear."<sup>30</sup>

Both of the artistic illustrations that Lighton commissioned for this scene visually cemented the reader’s vicarious role as a horrified but fascinated eye-witness. [see Figures 2.2 and 2.3] These illustrations were the only ones in his books in which Lighton himself did not appear as a recognizable character. He and the reader were implicitly fused as they shared the perspective of the off-stage spectator towards whom the scene was oriented. In the first illustration, the deserter’s bleeding back was angled slightly away from the viewer towards the line of officers and soldiers who were administering his punishment. In the later illustration, the deserter was repositioned so that he appeared splayed directly before the viewer. The style of the first illustration, reminiscent of woodcuts, had such an abundance of dark thatching that the marks along the deserter’s back did not stand out through any sharp contrast. The later steel-engraved illustration more successfully visually emphasized the gore on display. Both images, with their half-naked, bloodied, faceless victim, were intended to shock, and they aided Lighton

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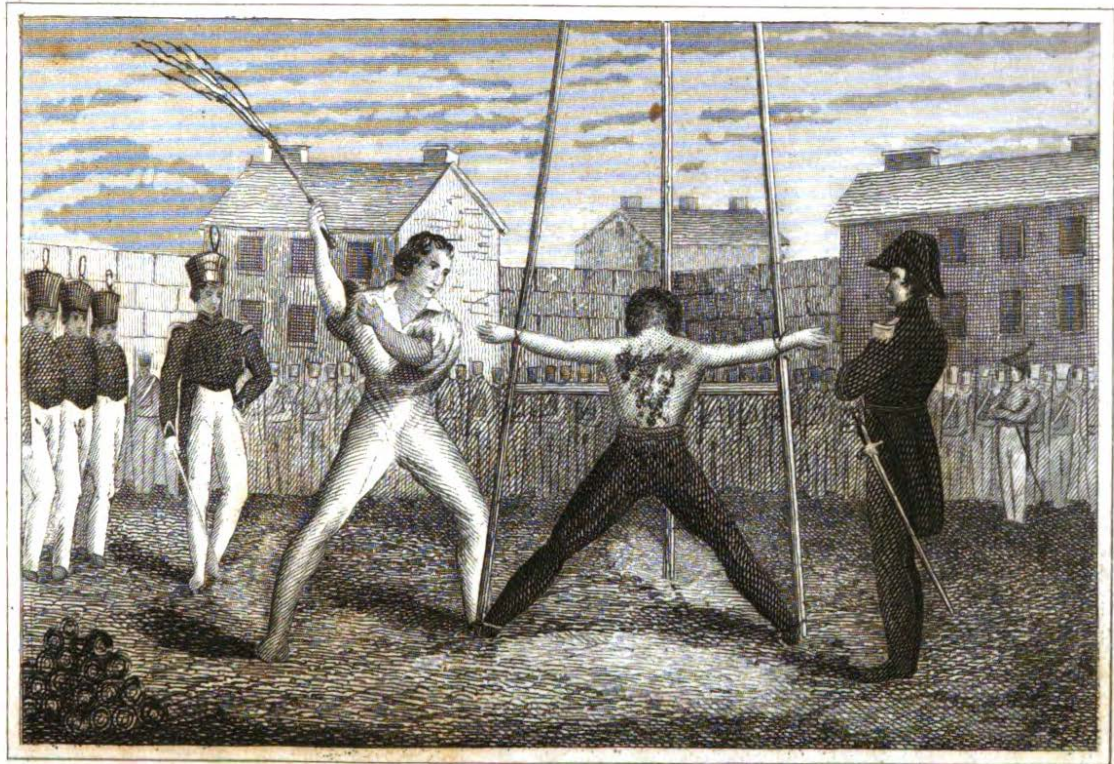
<sup>30</sup> Lighton, 1854 edition, 69.

in making his argument that no decent, feeling person should be able to view such sights and remain unmoved.



**Figure 2.2:** Punishment Scene illustration from Lighton's memoir, 1838 edition

### MILITARY PUNISHMENT SCENE.



*The troops are formed in a line and the offending soldier is stripped naked to the waist, and his hands and ankles bound firmly to two arms of the triangle to receive his punishment.* P. 105

**Figure 2.3:** Punishment Scene Illustration from Lighton's memoir, 1846 edition

In his text Lighton turned special attention to the emotional and physical reactions of male spectators, describing a sensitive masculinity that could be overwhelmed by sympathy and contrasting it to objectionable stoicism. "Our colonel – hard hearted man! – used to stand unmoved at the scenes...[but] the troops were usually affected to an astonishing degree. Some of them I have seen faint...while nearly all turned their heads in sorrow." Lighton's interpretation of flogging and its effects on witnesses – among which he included the reader – shifted the locus of shame away from the victim of this humiliating punishment and onto its perpetrators. The ordinary troops, whom Lighton had earlier described as vice-ridden and brutish, were shown

through their sensitive reactions to be more humane than the officer who ordered this beating and observed it unaffectedly. Lighton extensively quoted British Methodist Adam Clarke's Biblical commentary on the book of Deuteronomy, which stressed that there was a divine prohibition against punishing any crime with more than the "forty stripes" that Moses prescribed. Lighton also emphasized that these punishments were deliberately carried out in places where no spectators outside of army control would be able to react to them. "[T]hese punishments were always inflicted within the walls of the barracks; every avenue to the public streets being closed and guarded, to prevent the entrance of the people, and keep from them the knowledge of these insufferable cruelties." For Lighton, witnessing was an act that could disrupt and potentially defeat the aims of military punishment, and he used both words and images to transform the reader into such a witness.<sup>31</sup>

Bunn and Lighton rejected the sense of duty and shame that military punishment sought to impose on them for desertion, but their approach to financial obligations was not similarly subversive. Although Bunn felt no allegiance to the British army, he claimed that a different moral responsibility did restrain him from desertion for a time: the obligation to repay his honest debts. While Bunn was in the infirmary recovering from his flogging, one of his officers paid for better provisions and medical care for him. Afterwards, the same officer placed him in a largely unsupervised work situation tilling land at some distance from the garrison. Though presented with an excellent position from which to desert, Bunn and a like-minded comrade decided that "gratitude forbid my not serving him: but after we had labored there till the ensuing April, we concluded we had done sufficient to discharge our arrearages, therefore under no obligations to king or captain...concluded to set off the first good opportunity." Bunn portrayed himself as

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<sup>31</sup> Lighton, 1854 edition, 69-71.

morally unable to leave until he had repaid his officer's expenses with what he judged to be equivalent value in labor.<sup>32</sup>

A similar logic had governed Bunn's earlier behavior when a British trader had ransomed him from a group of Delawares. This trader, Thomas Smith, paid \$120 to secure Bunn's release, and in return Bunn accepted an indenture. Although he could have left British territory and returned to the United States, he honored his contract and worked almost two years in the environs of Detroit to repay his debt. Indeed, so seriously did he take his obligation that, when he fell ill and suffered acutely, "I was almost driven to despair; but in the intermission of my fits, would consider better of it, knowing the obligations I was under to Mr. Smith." Bunn's sense of what he owed to his benefactor nerved him to endure great physical suffering. Bunn's arrest for treason prevented him from completing his financial obligation, but he proudly noted that when he happened to encounter Smith again, he used the bounty he had received for enlisting in the British army to pay off his debt in full. Political crimes (damning the king) and military crimes (deserting the army) might be perpetrated without guilt, but defrauding a creditor could not be so easily justified.<sup>33</sup>

As Lighton published revised editions of his memoirs there emerged in his writings a similar moral rubric and a growing unease with the portions of his past behavior that involved theft. In his original 1835 memoir, he related an incident that had occurred in England, wherein a gentleman had noticed his poverty, charitably bought him food, and then offered him four pounds to serve as his substitute in the local militia. Lighton had agreed to this engagement, accepted room and board for a week, and on the proper day attended the "swearing in" and enrolled in the militia. However, his gentleman sponsor then reneged on his agreement, and

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<sup>32</sup> Bunn, 1797 edition, 27.

<sup>33</sup> Bunn, 1797 edition, 6.



“after all I could say or do, would not pay me but two pounds – half of the sum agreed upon, but said he would pay the other half when the regiment assembled for duty. Dissatisfied and somewhat vexed withal, I promised within myself I would never meet to do duty for him.” Lighton’s subsequent departure and permanent absence from the militia constituted his first military desertion, though he said nothing about this aspect of his actions. Initially he expressed no shame whatsoever over the incident, but when he revised his text in 1840, he appended a new and sharply self-critical conclusion to the above passage: “This of course was wrong, because one dishonest act can never make another right. The sin of one man does not justify the sin of another, although he may be a sufferer by the other’s wrong; better to suffer, than to do wrong.” Lighton felt ashamed in retrospect at having taken pay – even half-pay – for militia services that he never performed.<sup>34</sup>

In the reflections surrounding his second and more dramatic act of desertion – this time from the British regular army in Quebec – Lighton drew very clear distinctions between his military crime, for which he felt no regret, and his subsidiary thefts, for which he felt increasing guilt. The substance of this ethical divide was expressed even in his 1835 first edition. Regarding the desertion itself, Lighton presented a firm self-justification: “anxious to get free from the slavery of tyrannical oppressors, that I might again enjoy the endearing comforts of a social and peaceful life, and become useful to myself and my friends, I...resolved forthwith to make my escape.” But Lighton could not describe his methods of escape with an equal sense of righteousness. Lighton confessed that he planned to steal an officer’s uniform, money, and horse. He defensively commented “that while nothing could justify me” in taking such steps, “an excuse can be found in my youth, inexperience, and misery ; for I feel confident, that had not

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<sup>34</sup> Lighton, 1835 edition, 52-53; Lighton, 1840 edition, 62.

my sufferings been extreme, I never should have been persuaded to adopt a course so criminal.”<sup>35</sup>

In his 1840 revision, however, Lighton deemed such excuses inadequate and restated his actions in terms of harsh self-excoriation. Even though his officers were cruel, he pronounced his attempts to steal from them “most unjustifiable” and “wicked,” and noted that although he “silenced” his conscience by looking to the example of other thieving deserters, this constituted only

a poor defence for dishonesty. There was a sad want of adherence to principle in all this, and no excuse is offered to defend it; it was unqualifiedly, wholly, totally wrong....stern morality and true religion know of no such excuses. RIGHT is RIGHT, and ought not to be violated for any consideration whatever – no, not even to save life. Death is preferable to crime; and he who dies for virtue and duty gains honor from the great Author of his existence, which transcends, to an infinite degree, the trifling, temporary advantages that sometimes flow from crime.<sup>36</sup>

In a final revision in 1854, he exchanged the term “crime” for “sin.” Theft became in Lighton’s eyes a sin that even a righteous cause, like desertion, could not justify.<sup>37</sup>

Bunn and Lighton’s dutiful sensibilities in this regard are all the more notable when compared with their attitude toward other crimes subsidiary to desertion that they might have scrupled over, but did not, the most obvious being acts of violence. Both declared themselves willing to shoot their pursuers in order to avoid recapture, although neither in fact did so. Bunn did, however, fracture the skull of another soldier while attempting to resist arrest. Lighton carried a pistol with him and planned to fire if necessary. They apparently felt more morally at ease with the prospect of killing their pursuers than with stealing from them. Acts of desertion

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<sup>35</sup> Lighton, 1835 edition, 109-110.

<sup>36</sup> Lighton, 1840 edition, 119-120.

<sup>37</sup> Lighton, 1854 edition, 80.

often called upon participants and observers to weigh the interplay between political, military, personal and property crimes, and generally property crimes proved the hardest to excuse.<sup>38</sup>

Lighton and Bunn both encountered responses from readers or community members who questioned their integrity. Bunn eventually swore out an affidavit stating that “the above narrative is a true statement” and printed it on the closing pages of his new editions to silence his critics. Lighton recorded that the general reaction to his book was positive, and he “received generally the sympathy and ‘God speed’ of the people among whom I visited.” He found that the “rapid” sales justified him in making book-selling his primary employment. On being advised by a friendly American officer that his book might sell better in the southern states, he successfully expanded his circuit beyond New England. However, on tour he was confronted by critical readers who challenged him to more fully articulate what his desertion and new American loyalty meant.<sup>39</sup>

Lighton faced criticism on the one hand for his defiance of laws meant to defend property. He had stolen a horse in his attempt to desert, and in breaking out of jail he had defied the civil law. One Vermonter suggested that Lighton should have served out his prison sentence instead, saying that he could not claim to be truly religious and yet ignore his duty to respect the law. Had he served his time he would have been able to return to society as “an honest man.” Lighton, however, believed most Americans would agree that his desire to lead a moral, useful life proved that he did not belong in jail. Though accepting that his horse theft had not been morally justified, he did not feel obligated to accept his full prison sentence. Lighton derided his critic, observing that “scruples of law, knowledge and justice overcame his patriotism.” For Lighton, readers’ reactions to his desertion story became a barometer of their true national

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<sup>38</sup> Bunn, 1797 edition, 15-18; Lighton, 1835 edition, 111.

<sup>39</sup> Bunn, 1828 edition, 56; Lighton, 1854 edition, 165-166.

loyalty. Lighton satirized his opponent by invoking the revolutionary conflicts that had forged the international border, declaring him “a remnant of the old *tory stock*, who, by some unfortunate cause, stopped short in the wilds, before reaching Canada!” An American who could not see past legal technicalities to the larger system of tyranny from which Lighton sought escape was, in Lighton’s eyes, no American at all.<sup>40</sup>

However, Lighton did not see his loyalty to the American government as nullifying his kinship with his British readers, whom he still referred to as “my own countrymen.” These readers often rebuked him by saying, “You praise America and run down your own country,” which they felt was a kind of betrayal. Lighton combatted this accusation by conceptually breaking down the objects of national loyalty into three groups: the people, the place, and the government. Lighton clarified that, regarding his loyalty to Britain, “[t]he people and country are cherished, but the government, that mighty engine which grinds the poor and robs them of their right, I hate with an intelligent hatred!” For Lighton, the justified object of patriotism was a government that supported its people’s material prosperity.

Why should not every foreigner love and cherish its [America’s] institutions? Is not his labor richly rewarded? Does not its laws protect him in the possession of his sweet home; his farm, possessions, wealth, and all the rich immunities the heart in its rational desire of happiness can wish, far beyond what he can obtain in Europe? Then why not love the land and yield the constitution his allegiance, and become as loyal an American by adoption as Americans by nativity?<sup>41</sup>

Lighton was similarly frustrated by American readers whom he judged overly wedded to an ideal of inalienable patriotism, and he deployed their revered revolutionary history in his own defense. He encountered native-born Americans “whose tenacity for their country, whether right or wrong, was so unbounded that any one who disavows the army, or navy, and abandons

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<sup>40</sup> Lighton, 1854 edition, 167-168.

<sup>41</sup> Lighton, 1854 edition, 169.

his government, is a traitor." Lighton countered this criticism by answering, "Pray, then, what was Washington? What were all the veterans of the revolution?" He identified his act of desertion directly with the military and political rebellion of America's founding fathers, urging his critics to consider a new kind of nationalism that would be freely transferable and centered on ideals. He was not ashamed of his desertion because "it is a merit to escape, with all who suffer beneath oppression's sickening sway. The time has come when we must forsake our fastidious love of country, and cleave to the eternal principles of freedom and right."<sup>42</sup> Lighton argued for an ideal of patriotism in which sovereigns would win loyalty by providing freedom and material prosperity to oppressed fugitives and immigrants.

Bunn and Lighton's writings took their place within a wider milieu of public and private discussions about the legitimacy of deserting one's national allegiance and the idealization of American prosperity. Similar themes shaped the way that other soldiers and officers described what happened to British deserters once they reached the United States. These writers repeatedly used desertion to make arguments about the comparative national merits of Canada, Britain, and the United States.

### *British Deserters in America: Debating the Prosperity Narrative*

In 1847 a loyal British soldier in Montreal published a short pamphlet that claimed to faithfully reproduce the regretful voices of disillusioned deserters in the United States. John Henry Wilton, a veteran of the first Afghan war and an author of both fiction and non-fiction books about British military life, stated that the pamphlet was inspired by his chance encounter with five British deserters during a visit to New York. Seeing these men serving as new recruits

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<sup>42</sup> Lighton, 1854 edition, 168-169.

in the U.S. army, he questioned them about their feelings and circumstances. Wilton hoped that by publishing an account of their disappointments and guilt, he might dissuade other soldiers stationed in Canada from deserting.<sup>43</sup>

The choice to publish in pamphlet form was a carefully targeted one aimed at optimizing sales among poor army recruits. Wilton had first presented his observations in a Montreal newspaper, but “fearing that the circulation of a newspaper might be too limited, and scarcely ever fall into the hands of the soldier, the Author has thought fit to issue it in a pamphlet form, cheap, in order that it may be more extensively circulated amongst the Army.” Fearing, however, that some soldiers might assume that it was a work of falsified propaganda, Wilton promised to authentically reproduce the real voices of deserters. “[T]he language used to relate the short narrative, is drawn from the conversation and sentiments expressed by the parties introduced,” Wilton asserted, hoping that the British troops “will not be misled with an opinion that it has been made up expressly for the soldiers’ perusal.” Having made his truth claims explicit, Wilton proceeded to deconstruct the narrative of American prosperity that he believed lured many soldiers from Canada.<sup>44</sup>

In describing his trip to visit with deserters at the central training center for new U.S. army recruits at Governor’s Island, New York, Wilton treated the army base as a microcosm of the democratic United States and tried to expose its false appearance of freedom and plenty. Although the army post “in the distance appeared beautiful, [and] well fortified,” on closer examination Wilton found that the soldiers within lived in squalor. Wilton described the

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<sup>43</sup> [John Henry Wilton]. *The Deserters; A Narrative Founded on Facts of Recent Occurrence*. By the Author of “Scenes in a Soldier’s Life,” third edition (Montreal, 1847). It was printed at the office of *The Morning Courier* and sold at the price of two pence. Wilton did not attach his name to the pamphlet, but he can be identified through the other books to which he claimed authorship.

<sup>44</sup> Wilton, *The Deserters*, “Preface,” 3.

unpleasant material conditions of U.S. army life, attributing them to the disciplinary problems that grew from the lack of good order and hierarchy. The American privates resembled a mob, “men of all sizes and shapes, unsoldier-like, and uninstructed,” and in their slovenly clothes they “appeared as one mass of uncultivated, half-dressed, tasteless objects.” Their officers, hobbled by the democratic social order in which they worked, “appeared to have no power, or rather no extreme superiority, over the men, no acknowledged compliments on either side, no saluting; all seemed to be Dick, Bill, and Tom.” With the social distinctions designed to set officers far above their men breaking down, efforts to keep order could no longer rely on deference. Such discipline as there was came in the form of blows as officers cuffed inattentive soldiers about the head. “Thus I saw with utter astonishment – that men, calling themselves ‘sons of freedom,’ should permit themselves to be struck as if they were school-boys.”<sup>45</sup>

Wilton reported that deserters had to endure even worse insults to their masculinity than the other American soldiers did. One deserter had told him that his fellow soldiers made a game out of “casting hints, and using epithets” around him to shame him for his disloyalty and cowardice. The deserter was unable to defend his reputation, for “I felt as though all they could say was far less than I deserved, and, therefore, most quietly, and although most unwillingly, pocketed the intended affront.” Wilton asserted that “[t]he very boys jeer and boast their superiority over you, and upbraid you with your cowardice and fear to return, and challenge you to deny the fact, which conscience accedes to, being a deserter.” The drop in status that Wilton described placed grown men below youths and denied them the ability, vital in martial culture, of forcefully defending their reputations. Wilton portrayed men who had lost respect for themselves, their comrades, and the institution in which they served. He affirmed “that it was a

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<sup>45</sup> Wilton, *The Deserters*, 5-6.

general feeling of one and all, the regret at so far forgetting themselves not only as to desert so good a Service as the British, but to join so paltry a one as that of the American.”<sup>46</sup>

Wilton suggested that the decline deserters experienced in their material circumstances, their military reputation, and their masculine identity was due to the inherent shame of their crime and also to the difference in national character between the imperial provinces and the democratic states. Wilton decried the breakdown of “a beautifully arranged chain of responsibility, like that with which our [military] discipline is connected.” In Canada, the society and the army reflected the benefits of hierarchy, but “Not so with the Service of boasted freedom, where all is as I have described, one scene of dissipation and tumult, and all discipline lost through that erroneous idea of equality.” Wilton pointed to America’s “boasted liberty” as the guarantor of a deserter’s social fall rather than his rise. Wilton persistently positioned the British and American armies as direct stand-ins for the broader societies and governments they served, turning a discourse about military desertion into a strongly nationalistic screed on the virtues of oligarchy over democracy.

Wilton dramatized deserters’ process of swearing new national allegiance as the pinnacle of their betrayal. Neither Lighton nor Bunn had expressed any moral concern at all about the oaths they swore and broke over the course of their army service, but the deserters of Wilton’s narrative took the matter so seriously that, one said, “my mind has, since I took the oath of naturalization, been a rack to me.” In this deserter’s monologue, he confessed that, although fear of military punishment had driven him to flee to America and convinced him to remain there, he nonetheless abhorred himself when he considered the prospect of potentially making war against his native land. His speech expressed his sense of nationalism in heavily romanticized terms,

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<sup>46</sup> Wilton, *The Deserters*, 5-7.



recalling that his enlistment in the U.S. army had required him to swear that he would fight against all American enemies, including Britain. "My country – whose soil calls aloud for the aid of every heart to whom she gave birth – whose nobility and fame has raised her high above every other nation, as heaven is above earth...yet I had sworn to raise my arm against her."

Wilton's narrative re-centered the shame of desertion around the process of changing citizenship and enrolling oneself in a foreign nation's defense, revisiting the familiar Anglo-American debate about inalienable native allegiance that had underpinned the War of 1812. Wilton dramatized the horror deserters purportedly experienced when swearing to fight against their birthplace. In his view, it was not contentment with their new life that caused deserters to remain in America, but simply the fear of punishment – particularly of transportation to a penal colony – that kept them from returning to Canada.<sup>47</sup>

Speculating on deserters' unhappy fate in the United States carried appeal for British officers, and Wilton was not alone in disparaging the opportunities that America held out to Canadian deserters. Captain Godfrey Charles Mundy, a British light infantry officer serving near Niagara Falls, envisaged deserters at the bottom of the manual labor market in the United States. He thought many were roped into the dangerous public works construction jobs that traditionally fell to immigrants and soldiers rather than American civilians. He imagined desertion from his own regiment as a process whereby "enterprising and crafty" New Yorkers managed "to seduce, by high bribes and lying promises, some broad-shouldered and obtuse bumpkin, who is now perhaps repenting his simplicity, whilst working half-starved in the frozen bed of an American canal – a species of labour too severe for the 'free and enlightened' themselves to engage in." Another British army officer and author, Sir James Alexander, encountered deserters working in

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<sup>47</sup> Wilton, *The Deserters*, 4-5.

New York leather and textile factories. He suspected they had been "tempted" to desert by American employers anxious to procure new workers in a labor-scarce market. However, they "soon find to their cost that their labor is little esteemed, many respectable people refuse to employ them on any terms, and those who do treat them with deserved scorn and contempt."<sup>48</sup>

A few years later, during the Crimean War, British officers in Canada faced the unenviable task of drumming up new recruits to send to Russia. An anonymous "Officer Serving in Canada" wrote to the editor of the London *Times* suggesting that British deserters in the United States would happily return to be drafted if only they were promised pardons. He believed thousands would flock back to Canada, since "A deserter in the States leads the life of a slave, being put to the lowest drudgery; and, having perjured himself to his Queen and country, his word, like that of a runaway slave, is of no avail in any court; consequently he cannot demand payment for work, and frequently has to work for nothing." In the United States, a newspaper treated this overblown claim as unintentionally comical, cheerfully publishing it under the headline, "BRITISH IGNORANCE OF AMERICA."<sup>49</sup>

In his earlier Montreal pamphlet, British soldier John Wilton had argued that the hierarchy of Canadian society supported the proper functioning of the military in a way that democratic American society could not. An Indiana newspaper turned that argument on its head, suggesting that if "John Bull...wishes to prevent desertion in Canada, let him double the pay of his soldiers, throw open the line of promotion from the ranks, and abolish the system of aristocratic favoritism." In the meantime, the mere existence of a neighboring country offering

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<sup>48</sup> [Godfrey Charles Mundy] under the pseudonym Bugle, "A LETTER FROM UPPER CANADA," *The Museum of Foreign Literature, Science, and Art* (1822-1842); June 1839; 36, 252. Reprinted from the *United Service Journal* (London); Sir J.E. Alexander, "A Pursuit into the United States after British Deserters Charged with Felony," *Littell's Living Age*, Jan 25, 1845, 229. Reprinted from the *United Service Journal* (London).

<sup>49</sup> AN OFFICER SERVING IN CANADA. "English Deserters In The United States." *Times* [London, England] 19 June 1855: 12. The Times Digital Archive. Web. 4 Aug. 2015; *The South-western*, (Shreveport, LA), 8/8/1855, 4.

"the general promise of better treatment, higher pay and an abundance of honorable employment, which our Free Government and prosperous condition hold out to the oppressed and humble laborers of all nations," would continue to attract Canadian deserters. Americans' confident construction of their own reputation for prosperity and opportunity engaged with British critiques of that same image.<sup>50</sup>

In their official and personal correspondence, a mode of writing arguably less prone to propagandizing, some British officers continued to express their conviction that deserters from their regiments would be reduced to penury in America. One commanding officer in Kingston agreed that many deserters would return if they were offered an official pardon, since "the majority of these criminals undergo great distress in the States." He thought "the publication of the miseries they have suffered...would be likely to do much good." Another British officer recorded his impressions of deserters in his diary. When a deserter voluntarily travelled to Canada from Rochester, New York, to turn himself in, the officer expressed his surprise to see a man surrender himself for any motive other than indigence. This deserter puzzled him because, judging from the state of his clothes, he did not seem to be in a state of financial extremity. He asked the deserter why he had come back, and "he answered 'conscience.'" The officer found this hard to believe, but mused that "if one could but be sure of that there might be hopes of him yet." He was impressed that the man had kept a military medal he had earned ten years before for his service in the first Anglo-Afghan war. This material token of his loyalty and his prosperous appearance set him apart from other deserters in the officer's eyes.<sup>51</sup>

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<sup>50</sup> *Indiana American* (Brookville, IN) 12/7/1855, 2.

<sup>51</sup> Lt. Col. Charles Nicol to Lt. Col. Eden, February 1, 1833. British Military and Naval Records, RG 8, C Series, vol 171, p 99, reel C-2775, frame 290. Microform Digitization, Library Archives Canada; Sir Charles Chichester fonds, Microfilm A-1-11 (Diary June 1846-March 31, 1847), reel A-515, Sept 15, 1846, p 46, Library Archives Canada.

Many British officers in Canada, however, accepted the view that economic self-interest motivated desertion from their ranks and admitted that the United States offered soldiers attractive incentives to leave the army. An officer in Quebec reported that near proximity to the U.S. border "holds out great inducements to the soldiers from the constant ideas indulged in by them of bettering their condition from the high rate of wages supposed to be given there...particularly to those who have been brought up to any trade." Though his language was cautious and indefinite, he did not treat these deserters' expectations as necessarily false. He believed ties of language, culture, religion, and family made it possible for British deserters to find allies quickly. Initial desertions paved the way for more as absent soldiers wrote letters from Maine to Quebec telling their former comrades about the jobs they had found once they reached New England (the Quebec officer made it a habit to intercept such letters). A Montreal officer observed that the hope of finding work in the United States might often act as the incentive, not only for a recruit's desertion, but for his initial enlistment as well. "[M]any young men enlist at home with the object of obtaining a free passage to Canada, and proceeding the first favourable opportunity to seek employment in the States; and in a Country thickly inhabited by Emigrants from all parts of the United Kingdom, such an opportunity cannot be long wanting."<sup>52</sup>

Even Captain Mundy in Niagara, who had comforted himself with the thought of his lost soldiers penitently digging canals, admitted in public print that he encountered deserters in many walks of life who had achieved different degrees of success. While visiting a hotel in Buffalo, New York, he suspected various waiters at the breakfast table of being British deserters and satirized the tell-tale traces of their military past. "One fellow, with a sturdy figure and upright

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<sup>52</sup> Lt. Colonel Sir John [illegible] to Lieut. Col. Eden, Jan 24, 1833, RG 8, C Series, vol 171, 92-94, microfilm C-2775, frames 282-284, Microform Digitization, Library Archives Canada; William Grierson to Lieut. Col. Eden, Jan 23, 1833, *ibid*, frame 276.

carriage, I felt sure I could have converted to a living statue by the sudden word 'attention!'

Another, with a formal whisker, stepped off with the left foot when I called for the mustard, and shut the lid of the teapot with an energy which convinced me that 'shutting pans' had been the business of his life!" ('Shutting the pan' was, in 19<sup>th</sup> century military terminology, one step in the process of loading a flintlock gun and the subject of endless drill for any British private).

Mundy later indulged in more serious reflection, commenting that

it has been my lot to encounter and recognise several times in foreign countries soldiers in a state of desertion who had never been captured, and who could afford to laugh in the face of their former officer. I have seen them in private service, as thriving settlers, as miserable beggars, as musicians in theatres, and as bandsmen - as well as in the ranks - of the United States army. The left-hand man of my own company wheeled my baggage by my side as porter of an American hotel, just a quarter of a mile from the British outposts in Upper Canada.<sup>53</sup>

Mundy could not resist using his chance encounter with this familiar deserter turned baggage porter to make a symbolic gesture, seeking to directly equate deserters' material gains to their lost honor. When Mundy and his baggage arrived at the ferry that would take him back to Canada, the porter expected a tip. Mundy "gave him an English shilling, telling him, before two American fellow-travellers, that I was aware that it was not the first time he had taken the shilling, and that he ought to be ashamed to look his Queen in the face." Mundy hoped to humiliate the man in front of American by-standers by unmasking him as a deserter. 'Taking the shilling' was a colloquialism for enlisting in the British army or navy. Ironically, it reflected the history of coercion and impressment practiced in British recruitment, referencing the unscrupulous practice of getting men drunk and surreptitiously slipping a shilling into the bottom

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<sup>53</sup> [Godfrey Charles Mundy] under the pseudonym Bugle, "A LETTER FROM UPPER CANADA," *The Museum of Foreign Literature, Science, and Art* (1822-1842); June 1839; 36, 252. Reprinted from the *United Service Journal* (London); Godfrey Charles Mundy, *Our antipodes or residence and rambles in the Australasian Colonies with a Glimpse of the Gold Fields* (London: R. Bentley, 1852), vol 1, 2<sup>nd</sup> edition, 355.

of their glasses in order to claim they had accepted payment and consented to their enlistment. In recounting the incident as he did, however, Mundy used the image of Queen Victoria on his English coin to dramatize the taint of national betrayal that, in his view, ought to make even genuine prosperity in America a shameful prospect for deserters. In purchasing goods in their new civilian lives, they were literally selling out their sovereign.<sup>54</sup>

The comparisons between British Canadian and American society that were common in published narratives and officer's writings about desertion also appeared in several deserters' unpublished correspondence. A repentant British deserter put his own spin on the American prosperity narrative when writing from Niagara, New York in 1840 to negotiate a return to his Canadian regiment. His account may represent his personal interpretation of his experiences or it may be a more calculated version of events designed to please the British officers to whom he wrote seeking clemency. Either way, it suggests deserters' engagement with developing cultural pressure to voice their patriotism in terms of their willingness to fight against Britain and their assessment of America's reputed advantages. Private Edward Armstrong had deserted from Amherstburg in Canada West, just across the river from Detroit. Half a year later he wrote to his former captain, confessing that "I often think with regret on the night...when I deserted my colours." He used terms pejorative to the democratic reputation of the United States, describing his negative first impression of the citizens who celebrated his desertion. "The morning we arrived in Detroit we were received with shouts of applause, but especially by the rabble mob that surrounded us." At first Armstrong's recounting seemed to uphold the idea that the United States offered good material opportunities for deserting soldiers, since he and his companion were "taken to a house where we exchanged clothing, and next morning proceeded to 'Port

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<sup>54</sup> [Godfrey Charles Mundy] under the pseudonym Bugle, "'Notes From Canada.'" *Museum of Foreign Literature, Science, and Art* (1822-1842); May-Aug 1840; 39, 449. Reprinted from the *United Service Journal* (London).

Huron' were we engaged with a man at 12 dollars a Month." However, these benefits came with militant demands attached, demands that Armstrong proved unwilling to accept.

The central theme of Armstrong's letter was that material comforts could not tempt him into fighting against Britain. The United States' northern borderland – which was at that time caught up in the aftermath of failed Canadian rebellions and complicit American raids – grew more untenable for him the more he resisted the locals' aggressive social pressure. It began when citizens in Port Huron, Michigan, asked him to "go to drill a body of rebels that used to assemble there twice a Month." These rebels may have been a mix of Canadian French and British refugees or their American supporters. Scattered groups attempted for several years after the Canadian Rebellions of 1837-38 to maintain a presence on the American side of the border in hopes that a better opportunity for revolution might present itself. Armstrong and his companion refused to train or in any way support these men, and "by so doing we lost our employment." Other British deserters encouraged Armstrong to accede to the expectation to fight. "[T]he[y] told us to keep up our hearts, telling us we were in a free Country. And said that we should assist and defend the Country."

Unemployed, Armstrong eventually followed his fellow deserters into the U.S. army, but he did not see this as a renunciation of his earlier principles since he enlisted "merely for our own protection." Civilian life had proved unrewarding for him, and he was afraid of worse consequences if he persisted in refusing to cooperate with local militancy. He was eventually sent east and stationed in Niagara, New York. There, Armstrong and his fellow deserters could look across the river and see the Union Jack flying above Fort Mississauga in Canada. He said that "we often look with a sore heart at the Standard of old England waft on the other side, which I shall always defend while there is Blood in my veins."

He directly contrasted the depth of his patriotism to the size of his salary, rejecting material gain as a valid motive for changing allegiance. “The pay is 7 dollars a month here and sound in every thing but if it was 20 I would not be content to serve under their Government.” He decided to try to return to Canada “like the Prodigal of old,” but his letter to his British former officer was intercepted by his American superior officers. Convening a court martial, they branded Armstrong with a “D” on each hip, punishing him as a double deserter from both the British and American armies. They also had a copy of his court martial sentence mailed to his former officers in Canada with the request that they “publish it on parade” to his former company in a cross-border, dual-army shaming ritual meant to teach deserters of both nations that they could expect no clemency from either their American or British comrades.<sup>55</sup>

Another deserter’s individual correspondence offered positive interpretations of the same central themes by expressing a changing sense of national identity and celebrating the economic opportunities he found in the United States. In 1840 Private Robert Beckett enlisted in Her Majesty’s 2nd Rifle Brigade, and in 1842 he sailed with his regiment from Dover to his posting at Halifax, Nova Scotia. Beckett was only partially literate, being able to read but not proficient enough at writing to compose his own letters. Instead, he hired a transcriber to pen his semi-annual correspondence to his family in England. Beckett confessed to his mother that he had joined the army in a state of depression after the death of his wife, admitting that “I am now sorry for what I have done But it is to[o] late now to repent,” observing wryly that “if I had behaved my self I had no buisn[ess] to be a soldier.” At first Beckett was pleased with the material and economic conditions in Nova Scotia – “it is a very fine Country indeed and hear we can get 15 pence for every English shilling and hear we can get beef for 2½ per pound” – but

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<sup>55</sup> NARA DC, RG 153, Box 111, CC505, Pvt. Edward Armstrong, 7-9.



soon the cold climate began taking a toll on his health and he grew increasingly dissatisfied with the hard-scrabble life in the province. “Brother I will give you a littel about this Contry it a verry poore place it is not as good as home peopel have no worke and hardly aney thing to eate.” In January 1845 he joyously announced, “Dear mother I have the pleasure to tell you that I got out of the army and have got a good place at work and am a doing well I deserted on the 21st of september from Halifax and landed in Lubec [Maine] safe.”

He took for granted that his English family would be pleased at his improved material circumstances rather than ashamed at his desertion. In later years he discussed the possibility of finding work for a brother who wished to immigrate, and although he had “had a Great down fall” that left him financially strapped, he made progress learning the shoemaking trade and, thanks to the tutoring of a charitable lady, strengthened his writing skills to the extent that he could compose his own letters. In his final extant letter, written to his brother in 1851, he expressed his shift in national allegiance in the very terms that Wilton and Armstrong had been horrified to contemplate. He declared himself willing to fight against England, despite his continuing identification with and affection for that kingdom, in order to protect his adopted country and the material prosperity he had found there.

But in this Land of Living we have every thing as we want to make us Comfortable and happy...I Like this County Better then my own But I have Love for my own County But I much say that I Likes this County Better and then my own and will I fight for this county if they shalt go to war again[st] England[?] I shall fight for them and so you may [k]no[w] that I Loves this part Labouring men will get from 15 to 18 dollars a months and found all kinds of Labouring work <sup>56</sup>

Like Lighton, Beckett still considered England his country but felt more attached to America with its greater prospects for comfort and happiness. His decision to rhetorically pose

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<sup>56</sup> Library Archives Canada. MG40 M11. Walsh and Beckett family fonds. Robert Beckett file in box labeled: Bolton Metropolitan Borough Archives. 22/236/11 - 22/236/28.

the question of whether he would fight against England for the United States, despite there being no prospect of war between those nations when he was writing in 1851, suggests that the question carried an immediate cultural relevance beyond any practical, realistic considerations. Beckett expressed his American nationalism in terms of the country's opportunities for good work and wages, and also by personally pledging to fight against Britain as proof of his changed loyalty. He echoed the terms of other deserters and officers in their published and unpublished writings. These were the common considerations they faced, and though their responses were different, the terms of the discussion were shared. It was in their material success or failure, and in their willingness to take up arms against the nation they had once defended, that both British deserters and their critics looked for the quality of a deserter's individual patriotism. In public discourse, deserters' lives and careers became points of evidence in the ongoing contest of international status between the U.S., Britain, and Canada as rival partisans continued their debate over the relative merits and demerits of American democracy.

### *Conclusion*

In 1881, a newspaper in Jackson, Michigan, near to where Matthew Bunn had eventually settled with his family, published a few reflections on the significance of his life and narrative. The occasion that prompted this notice was the death of his daughter. Her obituary spent more time praising her male forebears than praising her, but as a result, the community was given a chance to remember – or misremember – Bunn's legacy. "[H]er father, Matthew Bunn, served in the Indian wars subsequent to the revolution, was captured by the Indians at St. Clair's defeat, and remained with them several years," the column noted incorrectly. "After suffering many hardships at their hands he made his escape, and afterward published a narrative of his captivity, a few copies of which are still extant." These fragile books, "which will be remembered by

many of the older residents of Michigan,” although most copies had already fallen to pieces, offered the community a piece of what they now considered pioneer history. They focused on the elements of that history that vilified British-Native alliances, recalling that “many incidents are given as to the manner and means of controlling influences exerted by the British over their savage allies.” The article concluded by elevating Bunn to the status of an historical hero, offering “All honor to the memories of our vanishing pioneers, and heroes and heroines of peace or wars.” No mention at all was made of Bunn’s desertion or the experiences in the British army that made up the second half of his narrative.<sup>57</sup>

Unfortunately, this selective reading of Bunn’s writings has largely persisted to the present day, and his portrayal of borderland desertion has been overlooked alongside those of other soldiers in the U.S.-Canadian borderlands. Yet these rich sources present the personal experience of desertion with unique descriptive depth and allow close analysis of the means by which soldiers sought to justify their crimes and articulate their patriotism. Bunn and Lighton’s desertion experiences diverged in many ways: their differences in time and location shaped their understandings and opportunities, with Bunn’s narrative reflecting key Anglo-American concerns of the pre-1812 era while Lighton’s grew from an antebellum milieu of evangelicalism and democratization.

These memoirists interpreted their lives in light of the values they expected to share with their readers. They were called on to address common concerns surrounding their authorship and to creatively market their books according to shifting public tastes. The material quality of their books carried a dimension of self-representation, marking Bunn’s persistent financial need and Lighton’s increasing financial success. Their narratives worked to illustrate, in words and

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<sup>57</sup>. “Obituary of Keziah Bunn Saunders,” *Jackson Citizen* (Jackson, MI) 5/21/1881.

images, the suffering bodies of deserters in order to displace the putative shame of military crime. Other aspects of their narratives were more conservative. The points at which they acknowledged a sense of duty surrounding debt and a sense of shame in regard to theft show the weight that shared respect for property carried in their culture. Theft complicated the ethics of desertion on a personal level and in communal discussion and debate.

The chapter has also traced the terms of a wider discussion in which contemporaries asked how the desertion of British soldiers from Canada to the United States reflected on those countries' societies and ideals. American observers as well as British soldiers, officers, and deserters tried to answer several central questions: did deserters achieve prosperity in the United States? If they did, could that justify them in changing their national allegiance, particularly if doing so meant they would have to fight against their former home? Deserters expressed their sense of patriotism in the light of these concerns. The motivations and the fate of British deserters who went to America became points of debate in contests over British and American values that shaped developing nationalistic narratives.

Soldiers' personal narratives highlight the extent to which political, military, and material values were intertwined in acts of desertion. On the border, the individual experiences of deserters generated not only personal reflection and public debate, but also international diplomatic and legal quandaries. The moral distinction that Bunn and Lighton drew between property crime and military crime touched on cultural values that had important consequences in the development of extradition procedures as soldiers moved across the border in stolen boats, wearing stolen uniforms. The next chapter will explore how the interconnected movements of people, property, and people who were defined as property – fugitive slaves – shaped the legal and diplomatic responses to army desertion along the Canadian frontier.

## **Chapter Three**

### **Deserters and Fugitive Slaves: Personhood, Property, and the Failure of Extradition**

In the early 1830s, the British Secretary at War sent an inquiry to leading officers in Canada requesting their advice about what preventative measures should be taken to reduce the troublingly high levels of army desertion along the North American frontier. Several commanding officers at different forts in Upper and Lower Canada offered a range of suggestions, but many of them also stressed that effective prevention would remain extremely difficult given the ease and speed with which their soldiers could cross into the United States. What was truly needed was some legitimate, effective means to get those soldiers back. Lieutenant-Colonel Charles Nicol, commanding the 66<sup>th</sup> Berkshires at Kingston, Upper Canada, wrote that “the grand measure” needed to remedy Canada’s desertion problem was “an international agreement between the British & American Governments, mutually to consider Deserters as Felons and deliver them up accordingly.”

Nicol was neither the first nor the last to suggest this. British imperial and American federal officials, as well as state and provincial civilian and military authorities, repeatedly tried to arrange some form of Anglo-American treaty or law that would provide for the exchange of deserters across the border. Yet, despite the hopes of many influential negotiators and law-makers, these efforts failed. Deserters from both nations continued to win legal protection by crossing the border. This chapter investigates the reasons behind the long stalemate that persisted between Britain, the United States, and Canada in the matter of desertion extradition.<sup>1</sup>

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<sup>1</sup> Lt. Col. Charles Nicol to Lt. Col. Eden, February 1, 1833. British Military and Naval Records, RG 8, C Series, vol 171, p 100, Microform C-2775, frame 291. Microform Digitization, Library Archives Canada [hereafter LAC].

In order to understand why efforts to legally exchange deserting soldiers foundered, it is vital to recognize the ways that judicial and diplomatic officers positioned these soldiers in relation to two other fugitive groups: deserting sailors and runaway slaves. In early high-level negotiations, Anglo-American controversies over naval impressment proved intractable. Recognizing this, the British imperial government tried to separate the issue of army desertion from its maritime counterpart. The hope was that lower-level negotiations between neighboring borderland officials might be able to make progress without remaining entangled in the impressment impasse. However, those living on the borderland did not consider the exchange of deserting soldiers as an independent issue amenable to local compromise. In Detroit, local authorities associated army deserters with fugitive slaves and eventually, with regard to extradition, extended the same legal protection to both groups.

Before the War of 1812 Anglo-American desertion conflicts remained diplomatically unresolved for both the naval and land forces, so deserting soldiers and the fugitive slaves associated with them continued to find protection behind the borderline. In later years, the relative political weight of these fugitive groups shifted. By the 1820s fugitive slaves had become a more central point of contention in British, Canadian, and American diplomacy than impressed sailors or deserting soldiers. The surrender of slaves who had found shelter in Canada became a non-negotiable prospect for the British public. This benefitted army and maritime deserters, who remained tied to the fugitive slaves in diplomatic bargaining. Neither group was rendered extraditable by treaty or law. At various points from the late eighteenth through the mid-nineteenth century, decisions to tie the exchange of army deserters to the surrender of fugitive slaves halted progress toward diplomatic and legal accommodations.

Fugitive slaves and deserting soldiers became conceptually and strategically connected in part because the legal issues raised by their transnational escapes were similar. Accordingly, the prosecution strategies employed by the men pursuing slaves and the officers chasing soldiers also developed along parallel lines. In the international law of the time, it was a simpler proposition to reclaim lost or stolen property across the border than it was to recapture fugitive people. If slave owners could convincingly argue that their slaves remained their property, it would be easier to invoke international law in favor of their return. Early frontier fugitive slave cases centered on the slaves' claim to personhood, which, if established, strengthened their odds of winning legal protection.

In early desertion cases, the military officers pursuing deserters explored tangentially related legal issues by focusing on the property soldiers stole when they escaped, including their government-issued clothing and their means of transport across the border (often horses or boats). By redefining their crime as theft rather than desertion, army officers hoped to appeal to widely accepted values reverencing property rights and thereby encourage foreign judiciaries to recognize deserters as felons and extradite them. By the 1830s, fugitive slave extradition cases more closely mirrored desertion cases because American slave owners had come to accept that British and Canadian judiciaries regarded fugitive slaves' personhood as inarguable. Attempting to claim that their former slaves remained their property would not succeed. The slaveholders and their representatives therefore switched their legal strategy and began charging their slaves with having stolen their means of escape (often horses) and other incidental articles of property, requesting their extradition as robbers or thieves. The common strategies and legal equivalencies between these two fugitive groups' cases ultimately shaped the negotiation, interpretation, and

enforcement of the Webster-Ashburton Treaty that emerged in the early 1840s to govern Anglo-American extradition.

This chapter builds upon the work, and speaks to the concerns, of borderland scholars of diplomacy, law, and slavery. No diplomatic historians have made army desertion their focus or highlighted the progress of negotiations surrounding that issue, though many of its important features can be found scattered through more general and comprehensive histories of Anglo-American diplomacy. Historians of the Webster-Ashburton Treaty have included accounts of the diplomatic bargaining that associated deserters with fugitive slaves. By tracing the longer history of association between these two fugitive groups, this chapter sets that connection in context, explains some of the reasons behind its emergence, and draws the attention of slavery scholars to the important role that fugitive slaves and their supporters played in securing, not only their own freedom, but the freedom of thousands of deserting soldiers and sailors as well.<sup>2</sup>

Deserting soldiers, fugitive slaves, and their pursuers gradually drew their extradition cases into close legal parallel as they manipulated categories of personhood, property, and robbery. Diplomatic and legal historian Bradley Miller has provided a nuanced analysis of the development of extradition law and customs between Britain, Canada, and the United States, and I have relied on his work to illuminate the wider context of relevant ideological trends and practices, particularly the ‘positivist’ and ‘naturalist’ distinctions that would become so influential in the case of deserters and other fugitives. This chapter examines a number of individual extradition cases, some of which have been previously studied while others have never received scholarly attention. Particularly important and little known are the post-treaty

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<sup>2</sup> Albert B. Corey, *The crisis of 1830-1842*; Howard Jones, *To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843* (Chapel Hill: University of North Carolina Press, 1977); Christopher H. Pyle, *Extradition, politics, and human rights* (Philadelphia: Temple University Press, 2001).



desertion extradition cases of the 1850s. The vigorous public debate they incited explored the extent to which deserters and fugitive slaves should be viewed as legally, materially, or morally equivalent.<sup>3</sup>

*Slaves and Deserters: Early Exchange Attempts*

International criminal extradition was infrequently practiced during this time period in the Anglo-American world, but by the 1790s two basic schools of thought had emerged regarding the exchange of fugitives. One was based on a "naturalist" interpretation, while the other took a "positivist" approach. Foundational international law scholars such as Grotius and Vattel described extradition as a natural obligation. This duty was only recognized, not created, by treaties and statutes, and its obligations remained even in the absence of formal laws or contracts between nations. Refusing to extradite would implicate a sovereign nation in the crimes of the fugitives it sheltered.<sup>4</sup>

A contradictory, positivist model of extradition became increasingly influential in the late eighteenth century and developed through the first half of the nineteenth century in tandem with a broader shift in understandings of sovereignty. Earlier commentators on sovereignty stressed communal rights and duties, arguing that respectable governments should work together on the world stage to maintain international order. Good order depended, in theory, on the exchange of fugitives so that no criminal guilty of serious crimes could escape justice simply by moving

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<sup>3</sup> Bradley Miller, "Emptying the Den of Thieves: International Fugitives and the Law in British North America/Canada, 1819-1910." PhD diss., University of Toronto, 2012.

<sup>4</sup> *ibid.*, 26-32. I depart slightly from Miller in discussing these schools of thought in the 1790s; his analysis of the adoption of these ideas in North American jurisprudence begins in 1819, but he acknowledges that in the 18<sup>th</sup> century both the U.S. and British governments already denied any obligation to extradite fugitives (pp. 44-46).

between nations. However, over the eighteenth century sovereignty grew steadily more synonymous with territoriality and the monopoly of jurisdiction over clearly defined spaces.

As a result, thinking about extradition changed and different expectations emerged. In the positivist view, sovereign nations could claim exclusive jurisdiction over everyone in their territory, including international fugitives, and they acknowledged no obligation to return runaways to another sovereign unless such arrangements were made by contract in the form of treaties or other specific legislation. If no laws or treaties were in force, some positivists felt that nations retained the option, but not the obligation, to extradite, while other positivists argued that political and judicial officials had no power at all to extradite without an authorizing treaty. In Anglo-American and Canadian extradition claims, naturalist and positivist expectations co-existed in sometimes muddled terms, and much confusion and debate centered on whether, in the absence of a treaty, nations had the obligation, the option, or the inability to extradite.<sup>5</sup>

Aware that extradition powers would remain uncertain until formalized, the British and American governments added an extradition clause to the Jay Treaty of 1795 in order to officially authorize the mutual exchange of fugitive criminals between their territories for the first time. However, they produced a very limited list of extraditable crimes. Only fugitives charged with "Murder or Forgery" were to be exchanged. One reason the extradition clause was so skeletal was that surrendering fugitives was unpopular with the American and British publics, who took pride in their national reputations for liberty and in the safeguards of their domestic legal systems and often balked at handing over defendants to be tried and punished elsewhere. The Jay Treaty proved to be exceptionally unpopular with the American public for a variety of reasons, and only one fugitive criminal was ever exchanged under its auspices. This criminal,

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<sup>5</sup> *ibid*, 31, 37-53.

Jonathan Robbins, was a British naval deserter who was charged with murdering an officer in the course of a mutiny. When the U.S. government surrendered him to face British court martial and execution, widespread protests broke out across the country.<sup>6</sup>

By the late eighteenth century reclaiming a fugitive person across the Canadian border was a legally and culturally contested endeavor; in contrast, friendly borderland officials frequently cooperated in impounding and returning stolen property across that same frontier. Fugitives and those who pursued them consequently adopted strategies that engaged creatively with the legal categories of personhood and property. Both the pursuers and the pursued took legal and diplomatic initiative, but the outcome of each case could be dictated by the confluence of political and military needs. In early borderland forays, fugitive slaves, deserting soldiers, and their pursuers tried alternately to disconnect or to entwine the rendition of persons and the reclamation of property.

In the summer of 1795, William McKinney -- variously described as a "Negro" and a "Molato man" -- fled from British Detroit, where he was held in slavery by one of the crown's Indian agents, and sought asylum behind American lines at Fort Wayne in the Northwest Territory. He timed his escape well. U.S. officers at that fort were preparing for treaty negotiations that would solidify American control of the Ohio country after the defeat of Native resistance at the Battle of Fallen Timbers. They saw McKinney as a potential source of information about underhanded British attempts to sabotage the upcoming council. The commander of the U.S. fort interrogated McKinney, who provided the desired account of British warmongering. He claimed that while enslaved he had acted as an interpreter in Anglo-Native

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<sup>6</sup> *ibid*, 65-66; Ruth Wedgwood, "The Revolutionary Martyrdom of Jonathan Robbins," *The Yale Law Journal*, vol. 100, no. 2 (Nov. 1990), 229-368.

negotiations and had witnessed the highest Canadian authorities urging Natives to forgo peaceful relations with the United States.<sup>7</sup>

By acting as an informant about British Indian policy, McKinney won protection from American officers, who, thanks in part to a recent rash of desertion, were already disinclined to do their neighboring British officers any favors. When a British agent arrived at the fort in pursuit of McKinney, the officers there reproached him for expecting their cooperation in recapturing a runaway slave when the British had themselves encouraged so many American soldiers to abscond. The agent, sent away empty-handed, reported that "They abused the Gentlemen in this place [Upper Canada] very much," being convinced that the Upper Canadian lieutenant-governor and high-ranking Detroit military officers had "caused bills in print to be dropt near their Fort, Encouraging their Soldiers to Desert." As for the fugitive slave, they "said he had gained his liberty by Getting into their Lines, he being stole from their Country." This defense, though effective, remained ambiguous in its representation of McKinney, treating him at once as a person who had "gained his liberty" and as property "being stole" from the United States.<sup>8</sup>

Another fugitive slave escaped from the same British Indian agent in Canada and followed McKinney's path to Fort Wayne several months later, and he put forward a more innovative defense by drawing on an international treaty to establish his right to protection and personhood. The commander at Fort Wayne reported his claims to General Wayne, head of the

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<sup>7</sup> John Francis Hamtramck, "Examination of William McKinney, a negro man who says he deserted from Col. McKee, the British agent among the Indians – at Detroit," June 30, 1795, Fort Wayne, MSS John Francis Hamtramck, Film copy no. 1, Roll 1, "Correspondence with Anthony Wayne, 1792-1796," Burton Historical Collection, Detroit Public Library.

<sup>8</sup> "Affidavit of David Tait," Brigadier General E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, with allied documents relating to his administration of the government of Upper Canada* (Toronto: The Ontario Historical Society, 1931), vol 5, 149; William Renwick Riddell, "Additional Notes on Slavery," *The Journal of Negro History*, vol. 17, No. 3 (Jul., 1932), 372; Gregory Wigmore, "Before the Railroad: From Slavery to Freedom in the Canadian-American Borderland," *The Journal of American History* (Sept 2011), 445-446.

U.S. army, noting that "A Negro Boy who was taken prisoner by the Indians, and sold at Detroit, has run away from his master at that place, and Claims the Benefit of the treaty, wherein all prisoners are to be given up." The treaty he referred to was the Anglo-American Peace of Paris that had ended the Revolutionary War and established American independence in 1783. The seventh article of that text provided for the release of all prisoners of war on both sides. By invoking the treaty, this fugitive sought to re-categorize himself as a person captured in the course of British and Native warfare rather than as chattel.

His claim to be considered as a prisoner of war, not a runaway slave, constituted both a daring and selective reading of the treaty, given that the same article forbade the British from "carrying away any Negroes or other property of the American inhabitants," thereby defining "Negroes" as "property." No one recorded whether this man had been enslaved or free in America before his abduction. But no Americans appeared to claim ownership over him, and he did not have to argue his treaty interpretation in a court of law. He argued it instead to the military commander at Fort Wayne, who, despite being himself a slave owner, accepted this claim to protection. Even when the fugitive slave's former master sent an influential broker to recover him -- Mr. Lassell, a French trader who had built up a store of good will at Fort Wayne by encouraging the Miami people to cooperate with the Americans -- the fort's commanding officer continued to resist any exchange. He wrote to his superior officer for instructions, but stressed that "for my part, I view the situation of the Negro man to be secured from the Demand" of his putative British owner. His invocation of the treaty helped provide a rationale for his personhood that, in combination with the political tensions then running high in the Northwest,

undercut his former master's attempts to win American cooperation and reclaim him as property.<sup>9</sup>

No one tried to apply to soldiers the same dehumanizing legal fictions that surrounded slaves, but although they were not considered to be property themselves, many deserters took property with them when they ran. In an early governmental effort at reclaiming runaway soldiers, high-level Canadian officials sought to bundle together the rendition of deserters with the reclamation of the property they stole. In October 1795, a group of four British soldiers serving aboard a schooner at British Detroit stole a boat stocked with "two pounders" – small cannons – and sailed to the U.S. Fort Presque Isle in Pennsylvania. The lieutenant-governor of Upper Canada, John Graves Simcoe, sent his confidential clerk on a mission to negotiate with the American military commander at Fort Presque Isle for the return of the boat, the "furniture" (presumably meaning the cannons), and the men. Simcoe explained to Lord Dorchester, the governor general of the Canadas, that he hoped to use the boat theft as an opening to secure the return of the military men and materiel that so often disappeared together. "My hopes were, had any officer of considerable authority been stationed at Presque Isle to have entered into an agreement with him for the mutual delivery of all boats and deserters; in which case I should have endeavored to have carried the same into effect with the State of New York. Many deserters from the King's Garrisons having stolen and carried off boats into that Country."<sup>10</sup>

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<sup>9</sup> John Francis Hamtramck to General Anthony Wayne. Fort Wayne, October 8, 1795. MSS John Francis Hamtramck, Film copy no. 1, Roll 1, "Correspondence with Anthony Wayne, 1792-1796," Burton Historical Collection, Detroit Public Library. I have treated the unnamed fugitive slave making the treaty argument in October as a different man than the William McKinney who testified about Anglo-Native diplomacy in June; however, it is also possible that Hamtramck's letters are referencing the same person. Both letters name Alexander McKee as the owner who is trying to recover his slave. A 'dear master' letter of questionable authenticity places McKinney (also known as Bill or William Kenny) in Cincinnati by September, so for lack of better evidence I have made the assumption that the fugitive who was with Hamtramck in October was a second slave who had run from the same master.

<sup>10</sup> *Aurora General Advertiser* (Philadelphia, PA), 9/26/1795, 3; John Graves Simcoe to Lord Dorchester, October 28, 1795, Cruikshank, ed., *Correspondence of Lieut. Governor John Graves Simcoe*, vol 4, 113.

However, Simcoe's hopes were frustrated as the American commander readily agreed to return the stolen property, but not the deserters. The American officer reported that it was beyond his power to send the men back, since "The perpetrators of the robbery you mentioned, are not in my power as they were permitted to pass to Philadelphia, previously to my taking command at this place." Although American officers made no efforts to arrest the deserters or return them to their British pursuers, they did take steps to seize the property they had brought with them. As soon as "they had offered the boat apparell and furniture for sale, the Commandant being apprehensive that it might be stolen property, prohibited the sale thereof, and took the same into custody until an investigation could be made....I now have orders from the Secretary of War to give up the Boat and furniture whenever due application should be made for the same." The American officer promised to pursue friendly international relations by vigilantly confiscating and returning stolen British property in any similar cases while remaining silent on the issue of exchanging fugitive soldiers. In the meantime, the deserters freely made their way to Pittsburgh and Philadelphia, where accounts about them were published in the local papers. Although no progress had been made in getting back their soldiers, Lord Dorchester praised Simcoe for his efforts, noting that "it would give me much satisfaction if such measures could be adopted as would reciprocally prevent deserters and culprits of every description from finding refuge in the Territories of either Power."<sup>11</sup>

Canadian leaders were not the only influential officials who wished to pursue terms with the United States for the mutual exchange of deserters; the British Foreign Ministry delved into similar negotiations, working under the shadow of naval impressment controversies. Both

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<sup>11</sup> Russell Bissell to John Graves Simcoe, October 9, 1795, Cruikshank, ed., *Correspondence of Lieut. Governor John Graves Simcoe*, vol 4, 100; *Philadelphia Gazette*, 9/18/1795, 3 and 11/9/1795, 2; *Aurora General Advertiser*, (Philadelphia, PA) 9/26/1795, 3; *Gazette of the United States* (Philadelphia, PA) 11/7/1795, 3; Lord Dorchester to J.G. Simcoe, Nov 22, 1795, Cruikshank, ed., *Correspondence of Lieut. Governor John Graves Simcoe*, vol 4, 144.

British and American politicians worried that the British policy of impressing sailors from American ships might lead to another Anglo-American war, and they attempted several times to reach some diplomatic understanding on the issue. In 1797 Lord Grenville, the British Foreign Minister, drafted a proposed addendum to the Jay Treaty that would have authorized the mutual exchange of naval and army deserters between all British and American territories. The U.S. Federalist administration rejected the proposal for several reasons. The Jay Treaty was already unpopular, and the Federalist party was under constant criticism from its Republican rivals for being too pro-British in its policies. The Federalists felt that it would be politically untenable for them to accede to a measure that would, in practice, authorize continued British impressments and even oblige American officers to assist in arresting those in their own ships, harbors, or cities whom the British claimed as deserters. The British administration understood this reasoning and had no wish to embarrass the Federalist Party, which they viewed as the source of their best American allies. Furthermore, they expected that war might soon break out between America and France, in which case they expected to find the U.S. government more amenable to compromising with Britain. As a result, the British administration temporarily stopped pushing for the exchange of naval deserters and also dropped the idea of pursuing new treaty terms.<sup>12</sup>

However, the British Foreign Secretary felt that the project of exchanging deserters from the land forces need not be abandoned; rather, it should be deliberately de-coupled from the diplomatic quagmire of naval desertion. He sent instructions to the British minister in America to support any exchange of borderland army deserters that could be worked out by the local

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<sup>12</sup> John Graves Simcoe to Lord Dorchester, May 6, 1796, Cruikshank, ed, *Correspondence of Lieut Governor John Graves Simcoe*, vol 4, 258; Lord Grenville to Robert Liston, July 5, 1797, Bernard Mayo, ed., *Instructions to the British Ministers to the United States, 1791-1812* (Washington, D.C.: U.S. Government Printing Office, 1941), 135-136; Grenville to Liston, Jan 9, 1798, *ibid*, 144-145; “Conversation with Robert Liston, [28 October 1797],” Founders Online, National Archives (<http://founders.archives.gov/documents/Hamilton/01-21-02-0164> [last update: 2015-12-30]). Source: *The Papers of Alexander Hamilton*, vol. 21, *April 1797–July 1798*, ed. Harold C. Syrett. New York: Columbia University Press, 1974, pp. 307–308.



authorities in Canada and the United States. Lord Grenville observed that, in the view of His Majesty's government, such an arrangement "may be carried into effect, by an agreement between His Majesty's Governor General [of the Canadas] or other Commanding officer in America and the Commanders of any of the Military Posts or Garrisons of the United States, as satisfactorily as by any public arrangement between the two countries to the same effect." The British imperial government took the position that the exchange of army deserters was not a matter that required resolution by international treaty. As long as treaty negotiations were stalled over naval impressment, army accommodations should instead be worked out piecemeal by borderland officials. The British and Canadian governments would sanction "any local and provisional arrangement...which may from time to time be concluded." This approach, however, ran counter to the positivist model of extradition that had begun to posit international treaties as a requirement for authorizing fugitive exchanges. Ironically, borderland military and civil officials in both Canada and the United States sometimes proved reticent to make local arrangements to exchange deserters precisely because of their sense of subordination to imperial and federal authorities. They did not want to trespass too far into foreign relations and lacked sufficient legal authorization to feel secure in taking independent action.<sup>13</sup>

Nevertheless, in at least one instance borderland officials did take initiative and attempt to create local laws to organize international deserter exchanges. This local approach and its pitfalls played out between Amherstburg, Upper Canada and Detroit, Michigan Territory during the first decade of the nineteenth century. In autumn 1806, a small band of British military officers from Amherstburg entered Detroit to search for a deserter from their fort, and several

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<sup>13</sup> Lord Grenville to Robert Liston, January 9, 1798, Bernard Mayo, ed., *Instructions to the British Ministers*, 144-145. Examples of borderland officials who, during this time period, believed they lacked legal authority to take initiative in arranging international deserter exchanges are further discussed in chapter four of this dissertation.

American army officers cordially, if illegally, agreed to assist them. When they tried to arrest the deserter, outraged Detroit citizens started to fight the military officers. The resulting brawl resulted in arrests, and the offenders were indicted for assault and battery in Michigan's territorial court. This court was headed by Judge Augustus Woodward, who initially meted out a fine of nearly \$9,000 to the Canadian officer who had tried to seize a deserter on Michigan land. He then discovered that \$100 was the maximum allowable sentence in existing law, and rather than set so small a price on American dignity, Woodward remitted his sentence and let the Canadians off with no further consequences. However, Woodward felt that some legal means of exchanging deserters was needed to prevent future clashes and hostilities.<sup>14</sup>

At the same time a second group of runaways, Canadian fugitive slaves, took refuge in increasing numbers in Detroit, and civil officials on both sides of the border associated these slaves with deserters as they tried to arrange a diplomatic and legal response to both groups of fugitives. The Canadians appealed to imperial authorities. The lieutenant-governor of Upper Canada presented the slave-owners' grievances to the British minister in Washington, D.C., and asked him to negotiate with American federal authorities to secure the exchange of both fugitive slaves and military deserters. However, given that the Anglo-American impasse over naval impressment had only grown worse and was reaching a crisis point, it was fruitless to expect high-level officials to negotiate or compromise on any type of desertion. Tying the fugitive slaves to that insoluble issue only lowered the prospect for any imperial action on the Canadian slaveholders' complaint. Meanwhile, Michigan officials tried to take local action. Michigan Territory had at that time only three legislators, one of whom was Judge Woodward. He drafted

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<sup>14</sup> Major Campbell, unaddressed, Jan 5, 1806, *Michigan Historical Collections* (Lansing: 1889), vol 15, 30; William Wirt Blume, ed., *Transactions of the Supreme Court of the Territory of Michigan, 1805-1836* (Ann Arbor: University of Michigan Press, 1935), vol 1, 58-63, 317-318; *ibid*, vol 2, 84-93; Wigmore, "Before the Railroad," 448.

a bill to legalize the exchange of deserters and slaves across the Canadian border. The bill required only two votes to reach a majority and pass, so Woodward needed to convince one of the remaining legislators – either the territorial governor or his fellow territorial judge – to agree to deny any further asylum to deserters and slaves.<sup>15</sup>

The bill failed when Woodward could not convince either of them to agree with him in full. “The Governor,” he wrote to James Madison, “was opposed to the restoration of deserters, but in favor of the restoration of slaves.” The other territorial judge rejected Woodward’s plan in its entirety because “he thought it was contrary to the Constitution.” The phrase implies lingering concerns about federal versus local authority in international relations, and possibly also concerns about the Northwest Ordinance, which many considered the ‘constitution’ of the territories. It contained an anti-slavery clause that was not easy to reconcile with the recapture of foreign slaves who had entered the territory.<sup>16</sup>

The final decision about the Canadian fugitive slaves’ fate fell to Woodward and it depended on his willingness to separate their treatment from that of military deserters. If he agreed with the governor’s proposal to return the slaves but not the deserters, then the slave extradition element of his bill would have the support it needed to pass into law. However, Woodward “refused to vote in favor of a remedy for any one part of the evil, unless the law was

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<sup>15</sup> “To his Excellency Francis Gore Esquire Lieutenant Governor of his Majesty’s Province of Upper Canada...The Memorial of the Slave Owners in the Western District of said Province.” Library of Congress, Manuscript Division, Great Britain Foreign Office 5, vol. 52, part 3, 175-176; Lieutenant Governor Francis Gore to British Minister David M. Erskine, April 24, 1807. Library of Congress, Manuscript Division, Great Britain Foreign Office 5, vol. 52, part 3, 173-175. Gregory Wigmore’s article, “Before the Railroad,” discusses these same events and offers valuable insight about the complex social and legal dynamics surrounding fugitive slaves in Detroit. My chapter comes into conversation with his work by expanding on the connections between deserters and slaves, which he also observed, and reframing the significance of Judge Woodward’s decisions to treat slave and deserter extradition together. I’m grateful to Dr. Wigmore for allowing me to read some of his research while it was still in progress.

<sup>16</sup> Augustus Woodward to James Madison, July 18, 1807 and March 17, 1808. Michigan Historical Commission, *Historical Collections Made by the Pioneer Society of the State of Michigan* (Lansing, 1908) 2<sup>nd</sup> edition, vol. 12, 505-507, 651-652.

made to embrace all cases of this description at the same time. Thus the whole was totally lost.” He considered fugitive slaves and fugitive soldiers to be cases of the same description and felt that good borderland relations would not be upheld by sending one group back while allowing the other to remain. His insistence on maintaining a connection between these two groups prompted him to abandon his bill completely rather than to pass a partial version that would have stripped slaves of the border’s legal protection.<sup>17</sup>

Having reluctantly settled on maintaining a stalemate regarding the extradition of deserters and slaves, Woodward used his courtroom to enforce that decision. When a Canadian slave owner moved to have his slaves recognized as his property in Detroit and returned to him, Woodward used the opportunity to clarify the legal status of fugitive slaves as persons, not property. He recognized a general obligation to return stolen property across international lines, but when it came to extraditing people he espoused a version of the positivist model. "The case of articles of property is however very different from that of persons...The Murderer, the traitor, the thief, the deserter from Military Service, are all received by other Nations, and they do not hold themselves bound to restore them when they are demanded. If it has been Sometimes done, it has been a matter of Curtesy from one nation to another. It is regarded as a matter of favor not as a matter of right." Woodward did not believe that an international treaty was the only means to authorize extradition, but if local arrangements were to be made, they would have to be reciprocal.

But here our Conduct does not differ from that of the opposite Nation. While She Compels her own Subjects to restore to one another their respective Slaves, She does not restore the Slave of the american master. Her laws do not provide for the restoration of the american Military deserter, while She is always willing to reclaim her own. There is therefore a want of reciprocity, and this Can only be remedied by withholding what She withholds, or other wise by reciprocal

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<sup>17</sup> Woodward to Madison, March 17, 1808, *ibid*, 652.

provisions, either on the part of the two nations, or on the part of the two adjacent local governments, with the approbation of their respective Nations.<sup>18</sup>

Woodward's inability to pass a local resolution that would provide for the international extradition of both deserters and slaves meant that, as a second choice, he fell back on "withholding what She [Britain] withholds" by offering asylum to both fugitive groups. In his view, this maintained a reciprocity in behavior between Canada, Britain, and the United States. This approach to fugitive extradition policy contributed to slaves' legal freedom as both American and Canadian slaves took advantage of Woodward's ruling by crossing the border, secure in the knowledge that local authorities would not cooperate in forcing them back to their owners. Former Canadian slaves worked for wages in Detroit, and former American slaves did the same in Upper Canada. Woodward did not give up hope of achieving his preferred solution, however. Although he felt unsure whether it would be favorably received, he forwarded his bill for the rendition of slaves and deserters to the U.S. Secretary of State with the thought that it might inspire the federal government to take action on the issue. He thought his bill might provide a model that could be exported across the borderland, and so enclosed "certain resolutions ...providing for its transmission to the respective British provinces and the respective American government bordering on them." His efforts proved fruitless, since American federal officials were no more inclined than their British imperial counterparts to work out accommodations regarding borderland extradition in the midst of their more pressing and intractable diplomatic contests.<sup>19</sup>

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<sup>18</sup> Augustus Woodward, "Pattinson opinion," William Wirt Blume, ed., *Transactions of the Supreme Court of Michigan Territory*, vol. I, 415, 417.

<sup>19</sup> Wigmore, "Before the Railroad," 451-54; Woodward to Madison, March 17, 1808, Michigan Historical Commission, *Historical Collections*, vol. 12, 652.

Before the War of 1812, deserters and slaves undertook similar movements across the border, and legal strategies surrounding the rendition of property and the extradition of persons began to link their cases. At the local level, in Upper Canada and Michigan Territory, officials viewed the flight of army deserters and slaves as interconnected issues and felt that the official response to both fugitive groups should be the same, whether that response be to surrender them or to protect them. Even as borderland officials decided to relate army deserters to fugitive slaves, higher level officials sought to disconnect army and naval deserters in an attempt to sidestep the impressment controversies endemic to Anglo-American diplomacy. Despite hopes that army desertion could be set apart for local compromise, runaway soldiers were never actually dealt with in isolation. Throughout this early period -- in part because of the associations the issue of army desertion garnered and in part because of the general uncertainty and unpopularity surrounding extradition procedures -- legal and diplomatic attempts at reclaiming runaway soldiers failed. Some of the beneficiaries of this failure were fugitive slaves. However, military officers were also experimenting with the strategy of accusing deserters of stealing property in the course of their escape. They hoped that labeling deserters as robbers or thieves might combat public sympathy for them and overcome official scruples about extradition. Deserters' pursuers tried to frame the central issue as the defense of property and the discouragement of theft, and this approach would prove transferable to fugitive slave cases as well.

#### *Falling outside of treaties: Antebellum extradition attempts*

The Treaty of Ghent, which closed the War of 1812, famously restored the *status quo ante* while addressing none of the central issues that had incited the war. The document made no statement on naval impressment nor any reference to reclaiming deserters; it contained no

extradition clause at all. Without any replacement for the limited and lapsed terms of the Jay Treaty, future attempts at exchanging fugitives between America, Britain, and Canada would have to proceed in the absence of treaty authorization. British and Canadian officials tried to continue forcibly reclaiming deserters on the borderland and Great Lakes, but their efforts were frustrated in several early post-war incidents. One conflict took place in 1816 in Detroit, when a British officer, Lieutenant Vidal, crossed the border to capture deserting sailors who had fled from a ship docked on the Upper Canadian shore. Vidal sent one deserter back across the border and was searching for the others when he encountered local resistance. A group of Detroit citizens turned him over to the governor and he was charged with kidnapping.<sup>20</sup>

Local Canadian officials tried to smooth over the incident and convince the American governor to release their officer without trial, and although their efforts failed, one of the arguments they put forward illustrated the continued strategic use of property claims in the borderland to recast the objectionable pursuit of people into the more acceptable pursuit of stolen goods. Commodore Owen, the deserters' commanding officer, explained that the sailors had stolen clothes and muskets when they left. He said that the only sailor Vidal had sent back to Canada had not been a deserter after all and had returned to his station willingly without any use of force, and then Owen assured the Michigan governor that "the clothes of Lieut. Vidal were amongst the things which had been stolen and I am now informed a pair of Boots belonging to him were in the house at which he was arrested and that it was whilst claiming these and others of the stolen goods that the arrest was made." By arguing that Vidal was only guilty of recovering stolen shoes, Owen was striving to present an excuse that would enable the

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<sup>20</sup> Alan Taylor, *The Civil War of 1812*, 430-435; Governor Cass to Commodore Owen, September 5, 1815, Michigan Pioneer and Historical Society, *Historical Collections*, vol 16, reprint (Lansing: Wynkoop Hallenback Crawford Co., State Printers, 1910), 238-240.

Americans to release Vidal without compromising their right to protect people within their territorial sovereignty.<sup>21</sup>

A British army officer stationed in Kingston, Upper Canada, published a very similar argument that same year, penning a newspaper editorial in which he redefined a British deserter as a thief in order to justify efforts made to arrest and punish him in New York. Lieutenant Colonel Thomas Green of His Majesty's 70th Regiment of Foot explained that he had sent soldiers to Sackets Harbor, New York, "not armed, nor with the view of seizing a deserter; but as private gentlemen, in pursuit of a villain who had committed the most daring robbery on his master, and in whose detention and punishment every upright citizen of every nation ought to have felt alike interested." Green explained that his men had appealed to proper U.S. authorities to arrest and try the deserter as a thief, but justice had been frustrated when the New York magistrate allowed the prisoner to escape with the help of a "lawless Mob" of citizens and shipbuilders near the navy yard. An anonymous New York citizen wrote a polite answering editorial explaining that international law and the British common law tradition both prohibited state authorities from investigating or prosecuting crimes perpetrated in foreign jurisdictions, so no Canadian criminal – whatever his crime – could be left to the laws of the United States for justice. "The laws of this state can take no cognizance whatever of any act committed, in Canada, in violation of the laws of your Province." Nor could New York law extradite criminals, be they deserters or thieves. Such an arrangement might "serve the cause of justice," but "the two governments have not thought proper to make such an arrangement; and perhaps it would in practice be attended with more evils than benefits."<sup>22</sup>

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<sup>21</sup> Commodore Owen to Governor Cass, Sept 6, 1815, *ibid*, 241-242.

<sup>22</sup> *Kingston Gazette* (Kingston, Upper Canada) 11/2/1816, 3; *ibid*, 11/9/1816, 2.



Though some local borderland officials and citizens refused to extradite or punish foreign criminals in the absence of a treaty, practical concern about the many criminals and refugees taking harbor across the long border caused some U.S. state and Canadian provincial officials to legalize sub-national extradition on their own authority. In Vermont, the governor assumed in several instances that he had executive power to extradite fugitives and answered requests from Canadian officials at his discretion. The New York state legislature passed statutory legislation in 1822 officially assigning international extradition powers to their governor. The Canadian provinces also empowered their governors to extradite to the United States – Lower Canada through a court ruling in 1827 and Upper Canada through legislation in 1833 – though this merely formalized their long-standing practice. The Canadian provinces adopted the naturalist ideals that justified and even required extradition in the absence of authorizing law much more frequently than contemporary American or British authorities did. Local state-province extradition arrangements worked, haltingly and in limited cases, from the 1820s until the late 1830s, when constitutional scruples on the part of the New York governor and the Vermont Supreme Court put an end to state renditions.<sup>23</sup>

Even during the years when the fragile borderland legal accommodation system was functional, military deserters did not easily fit within it. In 1832, the New York governor declined to extradite three army deserters to Canada, explaining that deserters were not included amongst those he was authorized by state law to surrender. Though they were also charged with subsidiary crimes, such as theft, he argued that he could not take notice of any lesser infractions “connected with and subordinate to a greater one, desertion,” nor could he have any guarantee that if he sent them back to Canada on the basis of their lesser crimes they would not still be tried

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<sup>23</sup> Miller, “Emptying the Den of Thieves,” 47-62.

for desertion. During this period many argued that 'political' crimes should not be extraditable, and that only a fugitive guilty of actions recognized as illegal in both countries could be properly considered for surrender. In the United States it was not illegal to desert from the British army, and vice versa.<sup>24</sup>

Neither did army desertion fit within the one great success story of legal deserter exchange during this era. The American federal and British imperial governments negotiated a large number of treaties for maritime deserter exchange throughout the late eighteenth and nineteenth centuries – just not with each other. It was becoming increasingly common for consuls to arrange bi-lateral treaties of commerce and navigation with friendly nations that guaranteed the mutual exchange of naval and merchant marine deserters. As early as the 1780s the United States had successfully parleyed with France to exchange seafaring deserters from vessels in one another's ports, and throughout the following decades it became standard to include a proviso in consular conventions that authorized the arrest and surrender of deserting sailors. The great exceptions to this policy in U.S. diplomacy were Great Britain's ships and colonies.<sup>25</sup>

Before the War of 1812 Anglo-American impressment controversies served as an insurmountable obstacle, and these reservations lingered even decades after the war. The impasse persisted so long that its causes were sometimes forgotten, and by mid-century an

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<sup>24</sup> Corey, *Crisis in Anglo-American Relations*, 170-171. The "principle of specialty" is the legal principle that defendants should only be tried for the crimes for which they are extradited, no additional charges being permissible. The doctrine was developing during these decades and became standard after the American Civil War. For examples of its use in fugitive slave and Confederate soldier cases in Canada in the 1860s, see Miller, "Emptying the Den of Thieves," 81-108.

<sup>25</sup> Many examples of these treaties can be found in Charles Irving Bevans, *Treaties and Other International Agreements of the United States of America, 1776-1949*, (Washington, D.C.: Department of State, 1968-1974), vols 5-12. For the initial French agreement, negotiated in 1788 and ratified in 1789, see Article 9 of the "Convention Between His Most Christian Majesty and the United States of America, for the Purpose of Defining and Establishing the Functions and Privileges of their Respective Consuls and Vice Consuls," *ibid*, vol 7, 794-800.

American representative in Canada complained with surprise about the lack of appropriate consular arrangements. In 1858 the American consul at Pictou, Nova Scotia, was dismayed when what he regarded as a routine request to local magistrates to help him arrest four deserting American sailors turned into a lawsuit against him for false imprisonment. He decided to check his protocols, but “On referring to ‘Wheaton’s Elements of International Law,’ I find the United States have treaties with France, Belgium, Brazil, the Hanseatic towns, Central America, Chili, Ecuador, Portugal, Prussia, Russia, Sardinia, Greece, Spain, Sweden, &c. &c.... but with Great Britain I find no mention made.” He asked his superiors for instructions on how to handle maritime desertion, “which, by the way, is likely to take place every week,” in the absence of any convention. The U.S. Assistant Secretary of State assured him that “Through the courtesy of the official authorities of the several dependencies of G. Britain, it rarely happens that any difficulty is interposed in the apprehension of deserters from American vessels and their delivery to the proper officers on board.” But the informal nature of such arrangements left them at odds with positivist expectations about extradition, and the officials involved in enforcing such arrests became vulnerable to disruption or legal prosecution.<sup>26</sup>

Even if Great Britain and the United States had finally dispensed with their longstanding disagreement over maritime impressment and consented to a consular convention, army desertion might not have been incorporated. The specifically commercial and nautical contexts of consular agreements normally resulted in a standard language that specified deserters coming from merchant or naval vessels as their targets. These consular conventions illustrated that,

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<sup>26</sup> B. Hammatt Norton, United States Consul at Pictou, Nova Scotia, to Lewis Cass, Secretary of State of the United States, July 19, 1858. William Ray Manning and Mary A. Gillis, eds., *Diplomatic correspondence of the United States: Canadian relations, 1784-1860* (Milwood, NY: Carnegie Endowment for International Peace, Kraus Reprint, 1975) vol 4, 734; John Appleton, Assistant Secretary of State of the United States, to B. Hammatt Norton, September 10, 1858, *ibid*, vol 4, 173.

despite the general weakness and uncertainty of extradition procedures in this era, it was indeed possible to diplomatically arrange legal deserter exchanges. Yet this single widespread success, driven by the practical exigencies of trade, left out any reference to military deserters on land and also excluded Great Britain and its colonies. When army desertion in the Canadian borderlands did return to prominence in Anglo-American diplomatic negotiation after the War of 1812, it was due to its connection to fugitive slave cases.

By the mid-1820s the flight of fugitive African Americans from U.S. slave states into Canada prompted the U.S. State Department to propose new Anglo-American treaty arrangements. The Secretary of State realized that when requesting the extradition of fugitive slaves from Canada, the United States would need to imbue the measure with some reciprocal benefit for Great Britain. In 1826 Secretary Henry Clay tried to use army and navy deserters as a bargaining chip, offering to surrender them in return for fugitive slaves. “Press the matter,” he urged the American minister to Great Britain, Albert Gallatin, instructing him to point out to the British that “Great Britain would, probably, obtain an advantage over us in the reciprocal restoration of military and maritime deserters, which would compensate any that we might secure over her in the practical operation of an article for the mutual delivery of fugitives from labour [slaves].” Clay added to Gallatin that he should pursue any accommodations whatsoever that he could obtain on behalf of American slaveholders, and only in the event that the British “absolutely decline” could he then seek a separate accommodation on military and naval desertion, along with more general criminal extradition measures.<sup>27</sup>

Gallatin and other American representatives sought such a bargain over the next few years of sporadic negotiation. The British ministers initially held out the prospect that

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<sup>27</sup> Henry Clay, Secretary of State of the United States, to Albert Gallatin, June 19, 1826. Manning and Gillis, *Diplomatic Correspondence*, vol. 2, 101.

accommodations might be achieved once the “mania” of abolitionism had calmed. However, they ultimately declared that the compromise the Americans were requesting was politically impossible. The British administration could not countenance the surrender of fugitive slaves who had become free by gaining British soil. Fugitive slaves had become non-negotiable and deserters remained tied to them in diplomatic negotiation. The British and Americans failed to reach any new terms to resolve soldiers' and sailors' extradition.<sup>28</sup>

As treaty terms for the return of fugitive slaves failed to materialize, some American slave owners switched tactics and, rather than trying to convince Canadian judges to recognize their slaves as property or as fugitives from labor, they instead adopted similar strategies to those that had been used against deserters: they accused the fugitive slaves of theft. In 1837, this legal strategy seemed to bear fruit when the local constable in Niagara-on-the-Lake, Upper Canada arrested fugitive slave Solomon Moseby. His former owners from Kentucky had charged him with having stolen the horse he had ridden to escape from slavery. Upper Canadian authorities reviewed his case and approved his extradition to the United States. A large group of African Canadians surrounded his jail in peaceful protest. When Canadian civil and military officers tried to remove Moseby for his journey to the United States, the crowd rioted, successfully freeing Moseby from his chains and physically shielding him long enough for him to make his escape. They were all unarmed, but two were shot dead when soldiers began firing at the crowd.<sup>29</sup>

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<sup>28</sup> “Protocol of the twentieth conference to negotiate a convention: Albert Gallatin, United States Minister, and Charles Grant and H. U. Addington, British Ministers,” September 24, 1827, *ibid*, vol 2, 633; Gallatin to Clay, September 26, 1827, *ibid*, vol 2, 634; Clay to James Barbour, United States Minister to Great Britain, June 13, 1828, *ibid*, vol 2, 181; Barbour to Clay, October 2, 1828, *ibid*, vol 2, 772.

<sup>29</sup> David Murray, “Hands Across the Border: The Abortive Extradition of Solomon Moseby.” *Canadian Review of American Studies* 30, no. 2 (March 2000): 187.

Similar slave extradition cases followed in Upper Canada with different outcomes. Fugitive slave Jesse Happy was arrested at the same time as Moseby on similar charges, but Canadian authorities denied his extradition since the alleged theft had occurred years ago and Happy had left the stolen horse on the American side of the border and sent notice to his former masters to inform them where to retrieve the animal. However, extradition again succeeded in the case of fugitive slave Nelson Hackett, who had stolen items that Canadian authorities judged unnecessary to his escape, including a watch and saddle. No riot saved Hackett in 1841, and he was successfully forced back to the United States. The British public was shocked by these cases, and they helped prompt the British imperial government to take back control of international extradition from Canadian provincial officials, requiring them to send all their decisions to England for review. The Hackett case occurred on the cusp of Lord Ashburton's mission to negotiate a new treaty with the United States, and it shaped the extradition article that eventually emerged.<sup>30</sup>

Behind-the-scenes bargaining again associated military deserters with slaves during the treaty negotiations, and this connection was publicized when Lord Ashburton received a delegation from the American and Foreign Anti-Slavery Society. Lewis Tappan and his fellow abolitionists were concerned that Ashburton had permitted 'robbery' to make it onto the treaty's extradition list, since slave owners had already proved successful at using similar charges to reclaim slaves from Canada. Ashburton believed that British and Canadian officials would not cooperate with American attempts to pervert the treaty. "Great care would be taken," Lord Ashburton stressed, "to protect the innocent, and ... the taking of any article necessary to effect an escape would not be considered felonious." Similar assurances circulated in Parliament

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<sup>30</sup> Robin W. Winks, *The Blacks in Canada: A History* (Montreal & Kingston, 1997) 2<sup>nd</sup> edition, 169-173; Miller, "Emptying the Den of Thieves," 67- 81.

during the ratification debates for the treaty. Lord Ashburton further explained that he had left desertion out of the treaty because of its association with slaves. “The Governor of Canada,” Ashburton confessed, “was anxious that deserters should be included, but as Lord A.[shburton] learned that claim would be put in for the delivering up of fugitive slaves, he abandoned the question of deserters from H[er].B[ritannic].M[ajesty].’s possessions.”<sup>31</sup>

In diplomatic bargaining from the 1820s to the 1840s, the political weight the fugitive slaves’ cause carried in Britain protected military deserters along the U.S.-Canadian border from extradition. Although American diplomats brought desertion to the negotiation table, their hopes of winning British concessions went unfulfilled. In the rich fugitive slave historiography of the Canadian borderlands, many historians have credited former slaves with their own self-emancipation. It is less well understood that the actions of black fugitive slaves and their supporters also secured freedom for thousands of British and American soldiers and sailors who continued to flee from military and naval service and the punishments that would have awaited them if extradited.

As it became increasingly obvious that American attempts to reclaim slaves as property or as fugitives from labor would be unsuccessful in British and Canadian courts, their legal situation grew more analogous to that of military deserters. Both groups were regarded as fugitive people whose crime was not recognized across international lines. Both often took articles of clothing or transport in aid of their escape, thereby leaving themselves open to subsidiary charges. The Webster-Ashburton treaty negotiators had recognized the similarities in their cases. After the treaty was ratified, a wider public began to take notice of these similarities

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<sup>31</sup> Lewis Tappan, “Interview with Lord Ashburton,” *The North American and Daily Advertiser* (Philadelphia, PA), 9/12/1842, 1. This article was also published in *The Liberator*, *Augusta Chronicle*, *Emancipator and Free American*, and *New York Evangelist*.

as well. Lord Ashburton was confident that British and Canadian judges would resist attempts to stretch the treaty's 'robbery' clause to cover fugitive slaves who had taken only what they needed to get away. However, that same clause posed a concurrent threat to deserters, and in the first decade of the treaty's operation several British army officers in Canada tried to use it to get their soldiers back from the United States. These post-treaty cases have never received scholarly attention, but they had a number of important effects. They contributed to the development of a strict, technical construction of the treaty's terms that limited the applicability of its extradition clause. They also incited public debate that framed deserters in direct comparison to fugitive slaves in ways that affected popular ideas about the character of deserters and the nations that protected them.

*'Robbery' in post-treaty deserter extradition cases*

Three years after the Webster-Ashburton treaty was ratified, a British army officer in Kingston, Upper Canada, decided to pursue a test case to see if he could successfully invoke its extradition clause to arrest several deserters from his company who had crossed to New York in possession of illicit goods. These goods included a boat, their captain's gun, a pocket watch, a few dollars of borrowed and stolen cash, and some women's clothing. The British officer, Captain Sir James Alexander, got in touch with the New York district attorney at Watertown, who expressed sympathy but also warned Alexander that he might be charged with false imprisonment if he arrested the deserters. Their crime, grand larceny, was technically distinct from robbery. This legal distinction was based, not on the value of the property stolen, but rather on the level of violence or threat used to obtain it. 'Robbery' involved the use of violence or intimidation to extract property from a victim, while larcenies included no elements of personal



confrontation or violence. The treaty listed only 'robbery,' not 'larceny,' as an extraditable offense. The district attorney suggested that the British officer should forget about obtaining extradition and instead see if a state court would indict and punish the deserters under American law for bringing stolen goods into New York.

However, Captain Alexander was not prepared to give up the hope of extradition. A New York justice of the peace agreed to issue warrants for the culprits' arrest, and eventually they came to trial in Watertown. Alexander testified against them and later described the fraught atmosphere in the small, cramped courtroom. A number of Watertown factory workers attended the trial, and he thought many were British soldiers who had previously deserted from Canada. "All these bore a villainous look of scorn and hatred of the prosecutor," he recalled, "and taunts and threats were muttered as thus - 'We don't care a bloody curse for any officer out of Canada! And if these men are surrendered, we won't let them go without bloodshed.'" In defiance of the hostile local audience, the prosecution's hired American lawyer argued for a liberal interpretation to be placed on the language of the treaty. It had not been written by lawyers, but by diplomats who must have intended for it to function to discourage theft in ways which adherence to technical law would quickly undermine. The prosecution argued "That under such a construction, if a man picked another's pocket of a pocket-handkerchief, so as to constitute *technical robbery*, the thief could be claimed, and would be surrendered as a fugitive if he should flee to the United States; but if he should steal any amount, however large, (say one hundred thousand dollars, by breaking into a bank,) under such circumstances as not to make it *technical robbery*, and should flee to the States, he would escape with impunity." The prosecutor concluded that "such a construction could not have been the intention of the high contracting parties" who had negotiated and ratified the treaty.

The Watertown judge, however, decided that the legal, rather than vernacular, understanding of robbery was the only one of which he could take cognizance, and as the crimes the deserters stood charged with were merely larcenous, he could not recommend their extradition to the state governor. Frustrated, Captain Alexander, with the help of some sympathetic New York gentlemen, tried to privately contact the New York state governor and attorney general to explain the case and request their intervention, but they were absent from the capitol. Alexander regretfully returned to Kingston and referred the case to the lieutenant governor of Upper Canada in hopes that state and provincial executive authorities might work out some exchange based on voluntary comity. His test case had illustrated that the treaty's provision for robbery, when considered by American jurists, would be interpreted with a legalistic precision that limited its applicability. The treaty's extradition clause could not easily be extended to cover deserters' incidental property crimes.

Beyond the legalities of the issue, the Watertown pursuit had exposed Alexander to the suspicions and concerns that borderland Americans expressed about typical British punishments for military crime. Alexander believed that much of their opposition to the extradition of deserters, even ones who had committed thefts, was rooted in "a mistaken notion...regarding the severity of our punishments." Alexander affected astonishment while relating that he "was asked if it was not true that the fugitives, if taken to Canada, would be punished, as deserters, with imprisonment, flogging, and banishment for life (!); and that though possibly guilty of felony, yet the severe military courts, and not civil tribunal, would deal with them." Although both flogging and transportation to penal colonies were still routine punishments for British desertion in the 1840s, Alexander demurred, assuring his American interrogators that "the civil court only would deal with them for the felony, and all that was desired was to prove to our soldiers in

Canada, that they could be brought back from the United States, if, in addition to desertion, they also were guilty of felony."<sup>32</sup>

Several years later, a similar case led to broader public discussion about the legal equivalencies between deserters and fugitive slaves. In May 1851 the British Vice Consul in Eastport Maine appealed to local authorities and had eight British deserters who had just arrived from St Johns, New Brunswick, locked in the neighboring town jail. The police chief of Eastport knew such an arrest was illegal and refused to turn a blind eye; he alerted “a large concourse of people” who exhibited such “excitement in favor of the prisoners” outside the jail that the British major who had come to testify and collect his errant soldiers instead withdrew, “fearing a riot.” The British vice consul heard the police chief promise that “had the Major interfered with the Prisoners we would all have been taken to the woods & there dealt with.” The British officials gained a hearing before a local magistrate where they claimed the deserters under the Ashburton treaty, accusing them of stealing their guns and ammunition pouches and the boat they had used to row to Maine. The magistrate ruled that the British had presented insufficient evidence and released the prisoners with the promise they would not be bothered again. The British commander returned to his fort while the vice consul wrote angrily to his superiors requesting diplomatic intervention. As for the local members of the populace who had turned out to protect the soldiers, “the abandonment of the prosecution was celebrated at Eastport by firing of guns, burning of tar barrels, & other demonstrations of delight.”<sup>33</sup>

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<sup>32</sup> “A Pursuit into the United States after British Deserters Charged with Felony: Communicated by Sir J.E. Alexander, K.L.S., 14th Regt,” *Littell's Living Age* (Jan 25, 1845): 228-235. Reprinted from *The United Service Journal* (London).

<sup>33</sup> Charles D. Sherwood, British Vice Consul at Eastport, Maine, to James Grignon, British Consul for Maine and New Hampshire. May 16, 1851. Manning and Gillis, *Diplomatic Correspondence*, vol 4, 429-30; James Grignon to Sir Henry Bulwer, British Minister to the United States. May 21, 1851, *ibid*, 429; Sir Henry Bulwer to Daniel Webster, Secretary of State of the United States, June 3, 1851, *ibid*, 429-30.

While the British minister in Washington lodged an official protest, the vice consul tried again: he had one of the deserters, Stephen Walsh – who had by now travelled to New York and enlisted in the U.S. Army – arrested, claiming him as a robber under the Ashburton treaty for having stolen a set of keys and a pocketknife in the course of his desertion. The extradition hearing came up before the New York U.S. Commissioner’s Court, and the sensationalistic, rabble-rousing *New York Herald* took an interest in publicizing it. The *Herald*’s impassioned articles prompted varied responses from other newspapers and also inspired a flurry of local interest and community action, particularly in the New York Irish community. The *Albion* noted with a touch of surprise that “The extradition clause of the Ashburton Treaty has been during the week the subject of legal enquiry, in this city, and the occasion of some gossip.” The paper named, not the deserter, but the extradition clause of the treaty as the central point of public attention. British and American equality under the treaty was at stake, and the *Herald*’s provocative defense of Walsh insisted that, in the name of national honor, Americans had to protect deserters from British extradition so long as the British continued to protect fugitive slaves from American extradition.<sup>34</sup>

Much of the commentary on the Walsh case boiled down to expressions of outrage about earlier British fugitive slave cases in which British judges had, in the view of angry writers, interpreted their way out of Britain’s diplomatic obligations to America. The editor of the *New York Herald* cited specific cases in which American slaves had committed murder, theft, or arson in the course of escaping to British territories in New Providence or the Bahamas. The *Herald* scorned British judges who had evaded the terms of the extradition treaty by redefining the slaves’ crimes. They “went so far as to indicate that the taking of life and property by a slave, in

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<sup>34</sup> *The Albion, A Journal of News, Politics and Literature* (New York, NY), 7/5/1851, 319.

an effort to recover his freedom, was a quasi political crime...and not known to the British law as one of the crimes specified in the treaty; and the judges refused to surrender the fugitive murderers and thieves!”<sup>35</sup>

The *Herald* considered that the Walsh case gave American judges a perfect opportunity to repay the British by applying their own legal rationale against them, for “The rule must work both ways.” Denouncing the allegations of theft in Walsh’s case as nothing more than trumped up charges – which they clearly were – the *Herald* concluded: “the British government cannot claim the restoration of their deserters, even though they did bring off their muskets and equipments, or take any other articles of property...in delivering them from their military slavery. Those lesser offences are all merged in the felony of mutiny, and according to the decision of the Bahama British judges the offences were merely political.” Determined to use desertion to hoist the British on their own petard, the *Herald* threatened that “that judicial officer of the United States who goes one jot or tittle beyond the British decisions we have referred to, in the interpretation of the obligations of this treaty, will humiliate himself and his country by his excessive international comity.” The U.S. Commissioner’s Court avoided such humiliation; the commissioner released Walsh, ruling that his minor thefts were subsidiary to his desertion and did not constitute ‘robbery’ or any other crime liable to extradition under the treaty. Upon hearing the verdict, “three groans for the British Minister were called for, and responded to by two-thirds of the audience present, who were sons, or descendants of sons of the ‘Emerald Isle.’”<sup>36</sup>

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<sup>35</sup> *The New York Herald* (New York, NY) 6/29/1851, 2. The fugitive slave cases that the *Herald* complained about have been analyzed in Irvin D.S. Winsboro and Joe Knetsch, “Florida Slaves, the ‘Saltwater Railroad’ to the Bahamas, and Anglo-American Diplomacy,” *The Journal of Southern History*, vol 79, no. 1 (February 2013) 51-78. In the early 1840s the U.S. Congress considered nullifying the extradition clause of the Webster-Ashburton Treaty altogether in protest against the rulings of British Bahamian judges that gave protection to fugitive slaves who had been accused of murder.

<sup>36</sup> *The New York Herald*, 6/29/1851, 2; *ibid*, 7/3/1851, 3; *ibid*, 7/26/1851, 4.

The *Herald* used the phrase “military slavery” repeatedly to claim equivalence between the conditions of British soldiers and American slaves. Since Americans were arguing that the Ashburton treaty should be interpreted and enforced the same way for both groups, it behooved them to draw strong parallels. “The ‘panting fugitives’ from British military slavery will be perfectly safe in the land of liberty, even if they should ‘incidentally’ bring away their muskets, bayonets, and Queen Victoria’s regimental breeches, and all, with them,” the *Herald* affirmed. When Lord Ashburton had “assured the abolitionists that, if a runaway slave robbed his master...of a horse, or any property, in effecting his escape, the offence was...not within the treaty,” he had by that very stipulation established a legal principle that “placed deserters and slaves on the same platform outside of the treaty.” Yet these claims of equivalence were also meant as a critical commentary on British and abolitionist principles, and deployed stock phrases of abolitionism sarcastically. “But can it be complained of, if, as Christians, we should yield ‘sympathy’ and give ‘encouragement’ to the ‘miserable victims’ of British military slavery? Surely not.”<sup>37</sup>

The *Herald's* anti-abolitionist editorialist positioned deserters as sharing in similar plights to slaves and as being entitled to American legal protection from British efforts to “prostitute the treaty, or pervert it” in order to recover them. The writer also exaggerated the lengths to which abolitionists went to protect fugitive slaves in order to frame British deserters as “poor white” victims in need of the solidarity and support of their racial brethren.

When a fugitive negro slave from the Southern States is arrested, battalions of lawyers promptly volunteer to aid him to escape. The provisions of the constitutional compact between the states is sought to be nullified for the runaway slave, and acts of Congress, requiring his surrender, are assailed as unconstitutional, and every pretext resorted to in order to get him clear.

Now, here is the case of a poor white man, not, it is true, of the vaunted Anglo-Saxon race, but of Celtic origin – a native of Erin’s green isle. He was

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<sup>37</sup> *The New York Herald*, 7/26/1851, 4.

probably forced to enter the British army by that despotic poverty which English oppression makes the lot of every Irishman who is not 'born with a silver spoon in his mouth.' Breathing American air, his soul swelled with the holy aspirations of freedom, and he has cast aside the claims of British military slavery.

Constructions of whiteness helped Americans to imagine deserters as part of the same racial hierarchy they saw as being under attack by hypocritical abolitionists who defended fugitive slaves. The rhetoric of a British military slave finding freedom upon breathing American air may have been a deliberate inversion of the famous, if apocryphal, Somerset dictum that the air of England was too pure for a slave to breathe. Pointing out that the deserter Walsh did not have any supporters volunteering legal assistance to him, the *Herald* denounced the "rank hypocrisy" of "negro philanthropists" who focused their attentions solely on black fugitives. In a large community gathering of New York Irishmen organized to raise public awareness and gather money for Walsh's defense, an orator insisted that "the yoke of British oppression was not to be borne by anyone who possessed a skin as fair and clean as the greatest nobles in the land," a "brave nobleman of nature."<sup>38</sup>

Nevertheless, it was a difficult proposition to maintain that American national honor depended on protecting an Irish deserter whose moral, ethnic, and class stature were all open to attack, and dissenting voices challenged the positive spins that Walsh's advocates put on his desertion. They re-evaluated claims of equivalence between the situation of soldiers and slaves. One editorialist reproached the *Herald* for its own brand of hypocrisy, since it published "almost daily the parades and reviews of the citizen soldiers of this vicinity," and "the terms 'soldierly honor' and 'military virtue' are not of unfrequent occurrence" in its pages, and yet "desertion, according to its code of honour, is a downright praiseworthy act, even although the deserter be a volunteer and not a conscript." Traditional patriotic values weighed against the *Herald's*

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<sup>38</sup> *The New York Herald*, 6/30/1851, 2; *ibid*, 7/1/1851, 4.

interpretation. The *Albion* rejected the *Herald's* attempt to treat Irish desertion as a political crime aimed at escaping slave-like conditions of oppression: "the Herald only intends its arguments to apply to Irish deserters from what it calls 'British military slavery,'" but the author reaffirmed "that desertion neither is, nor can be, a legitimate source of congratulation, and that even Irish deserters from the American army found it very much otherwise, on a certain memorable occasion under the walls of Mexico." The writer invoked American national pride against attempts to justify Irish desertion by alluding to the St. Patrick Battalion, a group of Irish soldiers who had defected from the United States army during the Mexican-American War. Many of them were hanged when recaptured by the American military, a punishment that had been widely publicized in American newspapers during the war.<sup>39</sup>

Abolitionist writers also fought back against the idea that deserters were morally or materially equivalent to fugitive slaves. *The Pennsylvania Freeman* directly inverted the *Herald's* description of fugitive slaves being deluged with legal support while poor white deserters went without aid. The abolitionist paper responded to the Walsh case by publishing a strong moral attack using the vocabulary of free trade to label deserters as morally guilty for their breach of voluntary contract, and thus in no way equivalent to slaves who fled from involuntary labor.

It is a striking evidence of the subtle and poisonous effect of slavery upon the popular conscience and moral perceptions, that this discharge of the British deserter was welcomed with great enthusiasm, by the same men that rejoiced in the recapture and enslavement of such men as [fugitive slaves] Henry Long and Thomas Sims. No 'Union and Safety Committee' furnished a lawyer gratuitously for the claimants, nor relieved them of the expense of their man-hunting enterprise; no clamors of the press or political demagogues excited popular fears and prejudices to demand the sacrifice, for the prisoner was no unoffending colored man seeking liberty from the power of the kidnapper who had robbed him of liberty and self, but a foreign deserter, violating his own

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<sup>39</sup> *The Albion*, 7/5/1851, 319; Rosemary King, "Border Crossings in the Mexican American War," *Bilingual Review* (Jan-Apr 2000), vol. 25, issue 1, 63-85.



contract and the law to which he was a voluntary party. Though we may blind ourselves to our inconsistencies, we cannot blind the world.<sup>40</sup>

*The Montreal Courier* likewise denounced the American acquittal of Walsh as “neither more or less than offering a premium to desertion from the British ranks, and shows us in plain terms what measure of justice we may expect when we have our neighbors of the model republic for our judges.” After mocking the legal logic of ‘incidental’ crime, the *Courier* interpreted the political significance of the verdict: rather than seeing deserters as a counterbalance to fugitive slaves in treaty interpretation, the Canadian newspaper author saw the Walsh case as rendering the Ashburton treaty meaningless. “If this be the way that treaties are interpreted by American Judges, nothing can possibly be left to us but to treat them as lawless brigands, with whom no treaty can be made.”<sup>41</sup>

A commentator from British Guyana, meanwhile, took a balanced approach to the underlying issues and acknowledged the legitimacy of holding deserters and fugitive slaves in legal equivalency under the treaty while denying any deeper equivalency of condition. “If fugitive slaves and military deserters are not included in the treaty negotiated by Lord Ashburton; if, as his Lordship is said to have stated, he refrained from proposing to include deserters, because fugitive slaves would then have been named by Mr. Webster, there is no ground of complaint on either side;” neither deserters nor slaves were legitimate legal targets for extradition. *The Demerara Courier* went on, however, to protest that “to compare the British military service – a service in which honorable distinction may be acquired even by one who enters it as a private – with American slavery, is what would scarcely have been embraced by the conception of anyone except the editor of the N.Y. Herald. We suppose we shall be next told

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<sup>40</sup> “A Fugitive Not Delivered Up,” *Pennsylvania Freeman* (Philadelphia, PA) 7/17/1851, 3.

<sup>41</sup> *Montreal Courier* (Montreal, Lower Canada) 7/10/1851, reprinted in *The New York Herald*, 7/13/1851, 4.

that the slaves of the Southern States voluntarily remain in bondage.” To which observation the *New Orleans Daily Picayune*, cheekily reasserting the equivalency viewpoint, retorted, “According to the frequent desertion of British soldiers, it is quite easy to see that they do not voluntarily remain in bondage.”<sup>42</sup>

In the campaign it built around the Walsh case, the *Herald* prompted Americans to imagine opposing American and Canadian nationalisms defined by the type of fugitives each nation chose to harbor. This was not the first time a controversy over extradition and desertion took on symbolic importance as a measure of American honor in relation to Great Britain. The *Herald* crafted an extradition- and desertion- centric national narrative of praiseworthy American opposition to British oppression.

The old men of the present day remember the case of Jonathan Robbins or Nash. They remember the conduct of the British naval officers prior to the War of 1812, in arresting, under the pretence of being deserters, and in impressing our citizens from our ships....Occurrences have taken place since, that have not aided to allay the feelings then excited. The attempt to arrest this Irishman is most injudicious, as tending to lay the foundation of differences between the two countries.

The *Herald* attributed the ill-feeling excited in Canada because of the Walsh case to “the sixteen thousand five hundred runaway negroes from the United States harbored there, and the refugees and tories of the revolutionary war yet living there, and the pestilent progeny of that race of traitors to their country.” But while Canada represented a shameful agglomeration of loyalists and slaves, America took pride in its identity as a nation of British deserters. “The Declaration of Independence was a general desertion of thirteen colonies and three millions of people from British military tyranny, and the only difference between Walsh’s case and it, is, that his is the case of an individual merely. It is resistance to military despotism, on a smaller scale.”<sup>43</sup>

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<sup>42</sup> *The Demerara Courier*, reprinted in *The Daily Picayune* (New Orleans, LA) 9/10/1851, 2.

<sup>43</sup> *The New York Herald*, 6/30/1851, 2.

In 1854, three years after the Walsh case, a fresh desertion controversy emerged to further test the limits of the treaty and to challenge borderland community values regarding fugitive people and stolen property. This desertion case stood apart from its predecessors because the two defendants, while deserting their post in Halifax, Nova Scotia, stole enough money to make theft appear as their primary crime. Two soldiers, William Uprichard and Thomas Carey, had broken into their regiment's money chest and taken roughly \$700 worth of coin and cash before escaping to the United States. They were arrested in Boston and a local constable found a large portion of the missing money – "About \$636 in sovereigns and Mexican dollars" – stuffed in a stocking in their traveling trunk. They were charged with robbery in order to forward their extradition under the terms of the Ashburton treaty. However, a Boston court followed previous legal precedents in deciding that their actions had constituted grand larceny, not robbery, and therefore their extradition was not covered by the treaty. The Massachusetts Supreme Court eventually considered whether they might be punished in the United States for bringing stolen property into the state, but concluded that thefts committed on foreign soil could not be tried under American jurisdiction. This case cast popular values into sharp contrast, leaving American commentators struggling both to condemn the property crime and to excuse the public's sympathy toward the deserters.<sup>44</sup>

Some early American reports about the case quickly shifted emphasis from the property crime to the military crime and its harsh potential punishment, suggesting that a firing squad might await the deserters if they were extradited. Only a day after they were arrested a telegraphic report from Boston spread the story to other newspapers, reciting the facts of the case

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<sup>44</sup> "Arrest Under the Ashburton Treaty," *The Boston Herald* (Boston, MA) 7/28/1854, 2; "Arrest of Deserters and Robbers," *New York Daily Times* (New York, NY) 7/31/1854, 3; "Two English Deserters Discharged from Custody," *New York Daily Times*, 8/12/1854, 1; "The Case of the British Deserters; Important Law Question," *The Albion*, 9/30/1854, 466; "Decision in the Case of the British Deserters," *Salem Register* (Salem, MA) 3/29/1855, 2.

but appending a grim prediction: "Under the Ashburton Treaty they will be sent back, and probably be shot." *The New York Herald* published an account of the arguments made at their trial, then observed that "Lately there had been so much desertion from the English army, that at Kingston, Canada, a deserter, on being captured, was shot, and as these men have added robbery to desertion, their lives might be in some danger should they be sent back." Although the mid-1850s were a time of peace on the U.S.-Canadian borderland, members of the British army in Canada were being sent to war in the Crimea. As a result, the threat that the wartime severity of capital punishment might be used to deter British desertion seemed credible to Americans. A writer at *The Plattsburgh Republican*, after reporting that the deserters' initial acquittal in Boston was met with cheers from the courtroom audience, felt the need to justify that expression of popular approval by clarifying that the crowd had not been giving their sanction to robberies. "The sympathy manifested toward these men was probably caused by the apprehension that they were reclaimed by the agents of the British Government more for the purpose of punishing them for desertion than for robbery. Since the war with Russia was proclaimed, deserters from the British service in any part of the world are punished with great severity."<sup>45</sup>

*The New York Daily Times* suggested that the robbery accusation was simply a fabricated charge and defended the deserters in much the same terms as New York papers had earlier defended Walsh, but other Americans sympathized with Canadian complaints about the Uprichard case. The *Daily Times* cast the deserters as victims of English ethnic and political persecution, asserting that the soldiers, "both of them Irishmen, are not guilty of the felony imputed to them, but that this is a trumped up charge - an artful dodge - to get hold of these

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<sup>45</sup> "Telegraphic Items," *The Daily Dispatch* (Richmond, VA) 7/29/1854, 3; "The Extradition Case under the Ashburton Treaty," *The New York Herald*, 7/30/1854, 7; *The Plattsburgh Republican* (Plattsburgh, NY) 8/19/1854, 2.

Republicans, first under the Ashburton Treaty, and then to strike terror by shooting them." The New York editor then criticized Massachusetts' abolitionist reputation, emphasizing that "It remains to be seen whether Boston folk will be as zealous for the liberty of white men, as for fugitive slaves of the black race." However, this appears to have been the only comparison to fugitive slaves raised in the coverage of the Uprichard case. Those sympathetic to these deserters focused instead on the threat of military punishment, while those unsympathetic to them mocked the fine legal distinctions that were developing to shield men guilty of property theft. New Orleans' *Daily Picayune*, which had been sympathetic to Walsh, in this case ridiculed the idea that "if a man has his pockets picked while he is asleep or not looking, or his safe cleaned out while he is in bed, he has not been 'robbed,' but only thieved from! Oh, the constantly unfolding beauties of that puzzle called law!"<sup>46</sup>

Borderland state and provincial officials were concerned at the premium this decision gave to encourage the influx of stolen goods across the border. Canadian papers angrily condemned the trials as "A GREAT FARCE" and suggested that any further accommodation on extradition was becoming impossible. The only type of reciprocity left open to them was that of welcoming and encouraging fugitive criminals to the same extent that Americans did.

Although the Ashburton treaty does not stipulate for the surrender of deserters, but does for criminals, it seems almost an impossibility for it to take effect in the United States, where there are so many political *sympathisers*. It is to be hoped that the authorities in the British Colonies will also find loop-holes for American hunted sheep to creep through whenever they come this way to get clear of their laws. There are too many Philadelphia Lawyers among our neighbors to expect fair play under the Ashburton Treaty; and it is a poor rule that won't work both ways...<sup>47</sup>

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<sup>46</sup> *New York Daily Times*, 8/12/1854, 6; "A Nice Distinction," *The Daily Picayune* (New Orleans, LA) 8/24/1854, 6.

<sup>47</sup> "A Great Farce," *St John Morning News* (St John, New Brunswick), reprinted in *The Boston Herald*, 8/22/1854, 2.

The Massachusetts Attorney General was similarly dismayed that neither the existing treaty nor state laws could be made to reach a case of what seemed to him to be obvious and serious property crime. He wrote an appeal to the state legislators to pass a law to prevent similar cases in the future. "As it was found that the international treaty with Great Britain for the extradition of fugitives from justice did not reach the case, three felons obtained entire impunity by making Massachusetts the depot of their stolen goods, and converting our territory into a modern Alsatia for fugitive criminals." Alsatia was a reference to a seventeenth century enclave within the city of London that had been treated as a legal sanctuary where criminals, particularly debtors, could flee to escape arrest. In 1855 the Massachusetts House of Representatives considered "a bill to punish certain criminals coming into this Commonwealth - designed to cover cases similar to that of the British deserters."<sup>48</sup>

Despite the disapproval expressed by Massachusetts state authorities, the Uprichard case extended the protection of the American border even to deserters who had stolen more than anyone could have considered necessary for their escape. The case stood in stark contrast to the earlier Canadian hearings for Solomon Moseby and Nelson Hackett that had extradited those fugitive slaves for taking any articles deemed superfluous to their escape, even so little as a watch or a saddle. For all the talk about the equivalency between their cases, Canadians held fugitive slaves to a harsher standard than Americans applied to deserters, and the border did not offer equal protection to both groups. Nevertheless, the tightly limited construction of the Ashburton Treaty to which these cases contributed strengthened the border and lessened the likelihood that future extraditions for larcenous escapes would succeed. As a wider reading

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<sup>48</sup> John H. Clifford, Massachusetts Attorney General's Office, *Annual Report of the Attorney-General to the Legislature* (Boston: William White, 1856), 5; "Massachusetts Legislature, House of Representatives," *Boston Courier*, 4/5/1855, 1.

public came to accept the equivalence of fugitive slaves and deserters under the treaty, both Canadians and Americans echoed the earlier decision of Judge Woodward in Michigan Territory in determining to withhold both fugitive groups as a way of maintaining reciprocity between nations.

### *Conclusion*

Over the first half of the nineteenth century the U.S.-Canadian border gradually extended all the way across the North American continent, and by mid-century the legal distinctions surrounding desertion and theft that had developed in response to the Ashburton treaty had spread to its far corners. In December 1857, six American soldiers deserted from Fort Bellingham, Washington Territory to Vancouver Island in British Colombia, Canada. The local U.S. and Canadian governors exchanged notes. In several previous instances during the 1850s American military officers had tried, and failed, to convince Canadian authorities to allow them to recapture their men on the charge of desertion alone. The Washington governor now invoked the Webster-Ashburton Treaty and called for the extradition of the American deserters on the charge of robbery. He enclosed affidavits attesting that the soldiers had stolen the uniforms they were wearing and the boat they had used to row away. The British Colombian governor refused to surrender them, carefully explaining the legal distinction between robbery and larceny in order to show that this case lay outside the technical grounds of the international treaty's extradition clause. "To constitute robbery...there must be a theft from the person of an individual effected, through force or fear....The evidence contained in the affidavits, in fact, merely goes to prove a

larceny, and I am therefore, of opinion, that I have no authority in this case to order a rendition of the individuals in question."<sup>49</sup>

This punctiliousness on the part of Canadian borderland officials vexed some of their British imperial superiors, who in the case of deserters heartily wished for a little more initiative and a little less legalism on the frontier. The Canadian governor sent copies of his correspondence to London, asking whether his interpretation of the treaty met with official approval. The Permanent Undersecretary of the Colonial Office scribbled irritably in the margin: "I wish it might turn out that the governor is wrong; we should have a good deal the best of it, if deserters are to be given back on both sides." The Foreign Office, however, dutifully consulted with the Queen's Advocate and confirmed that the Canadian governor's attention to the technicalities of the law was correct and his view of the treaty was approved. These civil servants joined the long line of British, Canadian, and American representatives who saw an advantage in the prospect of deserter extradition but could not establish the law necessary to obtain it.<sup>50</sup>

This chapter has shown that from the late eighteenth to the mid-nineteenth century both high- and low-level officials repeatedly proposed legal and diplomatic arrangements to return deserting soldiers across the border. These proposals failed, often because those same officials decided to treat army deserters in connection with fugitive slaves or deserting sailors. In the extradition attempts that took place before the War of 1812, the rising controversy of naval impressment made it difficult for high level officials to reach any compromises on desertion

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<sup>49</sup> Douglas to Labouchere, 24 April 1858, National Archives of the UK, 5678, CO 305/9. *The Colonial Despatches of Vancouver Island and British Columbia 1846-1871*. Ed. James Hendrickson and the Colonial Despatches project. Victoria: University of Victoria. <http://bcgenesis.uvic.ca/getDoc.htm?id=V58018.scx>. Accessed 27 February 2016. For previous attempts to recover deserters, see *ibid*, Blanshard to Earl Grey, 8 April 1850, National Archives of the UK, 5505, CO 305/2; *ibid*, Douglas to Labouchere, 5 December 1856, National Archives of the UK, 2423, CO 305/7.

<sup>50</sup> *Ibid*, Douglas to Labouchere, 24 April 1858, National Archives of the UK, 5678, CO 305/9.



more generally. Some British officials hoped that borderland leaders would take initiative and deal with runaway soldiers as a separate, local issue, but instead borderland experiences led lawmakers in Detroit to forge strong connections between army deserters and fugitive slaves. Aiming to maintain reciprocity between nations and unable to win the support necessary to extradite both groups at once, the Michigan judiciary determined to withhold both fugitive groups from their pursuers. The conceptual and strategic association of deserters and slaves shaped the legal meaning of the border.

After the War of 1812, fugitive slaves grew in political and diplomatic importance, and Americans tried to bargain for their return from Canada by offering up deserting soldiers and sailors as a concession to the British. The British rejected this proposal, and as a result America, Canada, and Britain once again withheld both fugitive groups from one another. However, even as the diplomatic association between soldiers and slaves was acting as a roadblock to deserters' extradition, new possibilities for slaves' extradition developed as their pursuers began accusing them of stealing property in the course of their escape. This legal strategy had been used against deserters as well, and the parallels between the issues at stake in their extradition cases became more apparent.

British diplomat Lord Ashburton deliberately excluded both deserters and fugitive slaves from the new extradition treaty that came into effect in the early 1840s, but military officers on the Canadian border soon tried to extend the treaty's robbery clause to reclaim deserting soldiers. Americans angrily noted that their efforts to do the same in fugitive slave cases had been rebuffed by British and Canadian judiciaries and loudly insisted on returning the favor. Each side felt that in the matter of treaty interpretation 'the rule must work both ways,' and they refused to read the diplomatic language of extradition liberally. Instead, they settled on a

technical interpretation that limited the treaty's applicability and opened loopholes for deserters, even those guilty of large-scale property crime. Deserters benefitted tremendously from the diplomatic and legal parallels that connected their cases to those of fugitive slaves.

But although army deserters retained a legal right to the border's protection throughout this period and beyond, in practice they did not always get to enjoy its promised safety. Informal systems of deserter capture and illegal exchange developed in the absence of authorizing law. The following chapter will examine the means by which different army officers tried to contain the problem of desertion on the frontier. The legal distinctions discussed in this chapter were not insignificant in borderland practices. They existed side by side with cooperative and coercive efforts to recapture deserters, and they helped create a borderland of temporary compromises and ambiguous legal spaces.

## **Chapter Four**

### **Working without Law: Deserter Pursuit Shapes an Ambiguous Border**

The small British fort on Saint Joseph Island at the northwestern tip of Lake Huron was one of the most isolated spots on the British North American frontier. Roughly three hundred miles from the next British station in the frontier chain, Fort Joseph's closest martial neighbor was the American post forty miles across the lake at Michilimackinac in Michigan Territory. One summer day in 1799, five U.S. army deserters reached the British fort. Two pursuit parties from Michilimackinac followed close behind them. It soon became clear to the British officer in command that the American officers intended to seize their deserters on British territory, "expecting to take them up at this post, with assurances of delivering any of ours who might go over to them." Such an arrangement between garrisons in their position, whose soldiers ran to one another, would have been convenient to both armies. Even if the legality of such an exchange was doubtful, they were so far from any oversight that they might easily act autonomously.

However, the British commanding officer at Fort Joseph refused to return the U.S. deserters to their Americans pursuers, choosing instead to treat the international divide as a strong boundary that he lacked the authority to breach. Subordinating himself to distant metropolitan authorities, the commander at St. Joseph Island decided that "as I never heard of any regulation taken place between the British Government & America respecting Deserters, since the treaty of Peace, I did not think myself justified in delivering them up, without having His Excellency the Commander in Chief's Directions on that subject." He viewed the international exchange of deserters as a weighty matter to be decided by governmental accord or

by the commander of the forces in British North America. His understanding shaped the mutual exercise of sovereignty at that particular time and place, affording deserters protection. The border held firm, even at its farthest occupied outpost, because an army officer honored the right of his superiors to dictate foreign relations. He declined to bridge the national divide on his own initiative, even for the sake of military expediency.<sup>1</sup>

High diplomatic agreements created the British North American border, but its practical meaning and power depended on the individual choices of frontier officers and inhabitants. Since judicial and diplomatic impasses over extradition left borderland authorities and residents without legal means to arrest and deliver up international deserters, they had to decide whether to address the issue through illegal or quasi-legal action. Many, like the British commander at Fort Joseph, respected the lawful distinctions between national territories and refused to overreach what they saw as the limits of their local authority. Others experimented with a variety of tactics, from persuasive to coercive, to extract deserters without the benefit of law. Between them, they created an ambiguous border that offered deserters a great deal of protection but remained vulnerable to informal compromises and illegal raids. Frontier militaries and civilians decided how the pursuit of fugitives would work on the ground, and the details of international desertion cases illuminate regional practices and attitudes that shaped the significance of the international border.

Historians of the northern borderlands have drawn attention to the Canadian frontier's "fluid" and "permeable" qualities while also acknowledging its strength. Borderland historiography more generally examines the complex ways that local residents invest dividing lines between them with political, cultural, legal, and practical meaning. The historiography also

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<sup>1</sup> Capt. Drummond to Major Green, Island of St. Joseph, August 8, 1799. Michigan Pioneer and Historical Society, *Historical Collections* [hereafter 'Michigan Pioneer Historical Collections,' or *MPHC*], vol 12 (Lansing, 1888) 303.

engages with Jeremy Adelman and Stephen Aron's influential idea that "borderlands" gradually evolve into "bordered lands" as early periods of mixed loyalties and uncertain boundaries give way to more clearly defined national identities and territories. Alan Taylor implicitly invoked this conceptual model in his examination of the War of 1812. He constructed a vivid portrait of a transnational, interconnected pre-war society along the U.S.-Canadian border that split apart into more hostile and nationalistic post-war communities.<sup>2</sup>

For Taylor, army desertion helped illustrate this transformation. He drew attention to practices of local cooperation, showing that before the war British and American military officers routinely assisted each other to catch deserters and turned a blind eye to pursuits that crossed the border. This amicable system fell apart as international tensions rose and violence broke out. After the war, desertion conflicts illustrated a newly intransigent set of borderland practices. Americans, particularly frontier officers in Detroit and the Great Lakes, refused to allow the British to reclaim their deserters from U.S. land or ships. Thereafter, Taylor suggested, the border acted as an effective shield to deserters who reached foreign territory. In his view, changed attitudes toward deserter exchange constituted one of many post-war developments that reflected the hardening of local divisions as residents accepted the permanence of the border between them.

As valuable as this model of change remains, borderland scholars would also agree that the strengthening of borders does not proceed linearly, and closer examination of desertion controversies in the pre-war period contributes evidence of a messier, more contingent

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<sup>2</sup> John J. Bukowczyk, ed., *Permeable Border: The Great Lakes Basin as Transnational Region, 1650-1990* (Pittsburgh: University of Pittsburgh Press, 2005); Afua Cooper, "The Fluid Frontier: Blacks and the Detroit River Region. A Focus on Henry Bibb." *Canadian Review of American Studies* 30, no. 2 (2000): 127-148; Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in between in North American History." *The American Historical Review* 104, no. 3 (1999): 814-41; Alan Taylor, *The Civil War of 1812*.

chronology. Taylor was right to draw attention to the cooperative practices that governed deserter exchange between the two borderland militaries in the decade before 1812, but it would be a mistake to assume that those practices characterized the entire pre-war period. Frontier officials behaved very differently in the 1790s, as the disagreement at St. Joseph Island suggests. During the uncooperative years at the close of the eighteenth century, local acknowledgement of the border as a line of defense for military fugitives was strong enough to interrupt most attempts at deserter arrest or exchange. The reasons behind the softening of the border in the early 1800s can be traced largely to the intervention of one leading Canadian authority, highlighting the important role that individual policymakers could exercise in frontier societies. Re-examining the chronological development of responses to desertion changes our picture of how the neighboring borderland societies, and armies, interacted before the War of 1812.

Despite a new sanction given to cross-border desertion arrests and exchanges in the first decade of the nineteenth century, British and American army officers' informal cooperative arrangements frequently broke down. Some illegal exchanges encountered challenges from civil magistrates, but military authorities could also question their legitimacy. Some army officers feared to act without explicit authorization because they understood how quickly their superior officers and civilian leaders would disavow them if an arrest went wrong. Indeed, the scapegoating of subordinate officers functioned as the standard diplomatic procedure in response to international incidents. Particularly in the British army, where rank and promotions relied heavily on patronage, peacetime officers might cultivate a healthy professional fear of taking initiative when a misstep might compromise their reputations, preferring to seek approval and steer clear of potential embarrassments. Working outside the law carried elements of professional risk, and informal understandings between army officers that relied on personal

discretion could be quickly disrupted or destroyed. Rather than resting on a firm foundation of widespread and well-established custom, pre-war deserter exchanges remained a patchwork of resilient but unstable compromises. Respect for sovereign territorial limits was already deeply entrenched in both metropolitan and frontier culture, though the attitudes and practices surrounding the border never fully or consistently solidified. Case studies of desertion arrests and exchanges in the years before the War of 1812 reveal a border more forceful than fluid.

Attempts to arrest or exchange deserters across the border remained popularly contested during the decades after the War of 1812. By the numbers, desertion across the border grew increasingly common and successful after the war, with many thousands of soldiers successfully escaping their armies. Only a few dozen examples have survived of deserters who, once they reached foreign territory, were reportedly threatened by illegal recaptures or cross-border raids. The scattering of publicized post-war international desertion conflicts nevertheless had an impact on how frontier communities defined themselves and their values. Some frontier officers and residents pursued international deserters by participating in informal cooperative exchanges, forceful raids, or mercenary kidnappings, but they frequently encountered opposition from their fellow inhabitants. Many rallied to the defense of deserters and upheld the sanctity of the border. These protective responses toward military fugitives stand out as relatively unusual in comparison to contemporaneous frontier criminal extradition cases. During these same decades borderland communities exchanged other types of criminals with increasing regularity.

Historian Bradley Miller has studied the period from 1820 to 1910, tracing nearly eighty cases (ten of them desertion cases) in which both local and federal officials illegally exchanged fugitives across the British North American border. He argues that a remarkably consistent set of orderly practices, equivalent to a form of 'low law,' governed most of these exchanges.

Military and police officers, at the request of their counterparts across the border, arrested fugitive criminals who were sheltering in their national territory and carefully conducted them to the borderline, where they transferred custody to officials of the neighboring nation. Although they were technically illegal kidnappings, these arrests were performed by state officials fully aware of the border's legal meaning who were usually careful to avoid carrying arms or using force outside of their own national territories. Miller notes that, aside from army deserters and the occasional murderer, the majority of these quasi-legal arrests targeted fugitives who had been guilty of property crimes.

Miller believes that residents all along the border, lacking any legal remedy to rid themselves of fugitive thieves, saw themselves as justified in creating customs of informal extradition that mimicked the legitimate procedures of higher authorities. He argues that they prioritized their own communities' internal order over concerns about violating the limits of the national territory and supported military and police abductions as a means of expelling undesirables from their towns. He also notes that when an arrest turned violent or incited protests, higher federal and imperial authorities developed consistent diplomatic rituals for resolving these international 'outrages.' They reaffirmed the importance of respecting sovereign territory in principle, even while doing little to enforce it in practice.<sup>3</sup>

Desertion cases provide an exception to this pattern, illustrating that, although customs of orderly fugitive exchange were certainly recurrent and possibly pervasive along the Canadian border, they were not monolithic. By separating out desertion rather than aggregating it with other crimes, a different constellation of public responses becomes visible. In contrast to property crimes like larceny or violent crimes like murder, desertion was a controversial act that

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<sup>3</sup> Bradley Miller, "Emptying the Den of Thieves," chapter 6.



could garner sympathy or indifference from some borderland residents even while attracting hostility and disdain from others. The international pursuit and exchange of deserters did not become a regularized, orderly element of borderland culture during the decades between the War of 1812 and the U.S. Civil War. Common community values did not usually unite behind deserters' expulsion, at least not before the end date of this study in 1860.

Instead, the cross-border desertion arrests for which public reports exist frequently note aspects of community protest and appeals to higher law. Borderland residents repeatedly intervened to stop the kidnappings of deserters or to punish their perpetrators. Furthermore, military officers were more likely than police officers to initiate unilateral uses of force, raiding into each other's territory without permission in order to catch their missing soldiers. This kind of forceful incursion convinced some borderland inhabitants and commentators that the good order of their communities depended, not on ridding themselves of deserters, but on refusing to tolerate any attempts to recapture them. Rather than embracing responsibility for clearing out military criminals from their midst, some borderland communities called on their distant governments to protect them by upholding the border and combatting illegal deserter pursuits through the proper diplomatic channels. Desertion cases prompted inhabitants of the northern frontier to express their wish to ally themselves with their central governments and urge them to enforce the laws more effectively.

Continued local resistance to international desertion arrests helps explain why desertion pursuits after the War of 1812 frequently moved to liminal spaces, particularly waterways. Both the Treaty of Paris in 1783 and the Treaty of Ghent in 1814-15 declared that the boundary between the Canadian provinces and the United States would run through the middle of the Great Lakes and their interconnected river networks. In practice, however, both armies ignored that

putative central line through the waters and conducted pursuits from shore to shore. Riverine deserter chases challenged borderland residents to articulate the specific geographic boundaries of their imagined sovereignties as they argued about where exactly their countries ended or began. The lingering jurisdictional fuzziness of rivers and lakes meant that coercive tactics, including violence, could be tolerated and legitimated on the water to a far greater extent than they could on land.

The mixed tactics, illegal compromises, and controversial pursuits that international desertion provoked during this period display the fluctuating strength of the border. A controversial crime freighted with nationalistic connotations, desertion could draw out a range of attitudes and responses from borderland communities. Military officers, insecure in their authority, also displayed varying degrees of caution or initiative in arranging to reclaim their soldiers. Some inhabitants cooperated in undermining the protection that the border offered army fugitives, but many defended deserters instead. In the process, they expressed ideals of sovereignty and international law that fell in alignment with those of their higher governments. At the same time, liminal spaces persisted as important sites of conflict even among those who recognized the sanctity of sovereign territory. Rather than positing a sharp divide between clearly-defined civilian and military attitudes, between pre-war and post-war practices, and between borderland and metropolitan legalisms, this chapter uses international desertion incidents to recover continuities in each of those areas. It also traces the irregularities of chronological change and the growth of specifically regional, borderland perspectives. It paints a portrait of frontier communities that cared deeply about sovereignty and offered protection to military fugitives even during the eighteenth century, but that nevertheless retained room for geographical and ideological ambiguity well into the nineteenth century.

*Resisting desertion arrests: the uncooperative practices of the late 18<sup>th</sup>-century borderland*

In the late eighteenth century, desertion often forced military officers to attempt to cooperate with neighboring settlers in order to get their soldiers back. Deserter exchange was most often a civil-military negotiation rather than a discussion between armies, because after the American Revolutionary War ended, the U.S. and British armies in North America barely interacted during the remainder of the 1780s. The British occupied a string of western posts within American territory, most of them situated along the northern borderline. The small U.S. army raised under the Confederation government spent most of its time at the opposite edge of the Northwest Territory, building forts along the Ohio River and engaging primarily with Native Americans. This small American force had a high desertion rate, but most of those desertions took place in the northeastern cities where the men enlisted. Many waited only to receive their bounty and equipment before departing from their recruiting stations never to return, while others slipped away during the march west toward the Ohio country. While U.S. deserters vanished into the cities, towns, and countryside of America's eastern seaboard rather than face difficult frontier conditions, the British struggled to keep their soldiers from doing the same. So long as they remained stationed within American territory, British deserters could easily flee into U.S. settlements in areas where farms and towns approached near to the British-occupied western posts.<sup>4</sup>

The British found it difficult to exert control beyond the walls of their forts. Captain Karl Schoedde, commanding a detachment of infantry at Fort Ontario in Oswego, New York, preferred to have miles of clear unsettled space surrounding the post. By the early 1790s he

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<sup>4</sup> William B. Skelton, "The Confederation's Regulars: A Social Profile of Enlisted Service in America's First Standing Army." *The William and Mary Quarterly*, series 3, vol 46 (Oct 1989): 770-785.

watched with apprehension as Americans began to settle land nearer and nearer. Fort Ontario, built with the capacity to house five hundred troops, sat on the high ground at the mouth of the Oswego River where it flowed into Lake Ontario. Captain Schoedde maintained the post with only forty men. In the summer of 1793, the fort's complement was seriously reduced when seven soldiers deserted.<sup>5</sup>

Schoedde sent an ensign and a group of privates toward the nearby American settlements to try to retake the runaways, but they soon encountered resistance. "The Americans settled at the Falls, taking advantage when the [pursuit party's] men had entered a [public] house, seized on them, took their arms and declared them prisoners." This group of roughly twenty New Yorkers then called for donations and raised three dollars, offering the same to any of their prisoners who agreed not to return to Fort Oswego. The enlisted men in the pursuit party declined the bribe and refused to desert. The Americans then let them go, but "threatened them if ever they returned to send them prisoners to Johnstown." Johnstown was the site of the county courthouse, more than a hundred miles distant. Although the British saw the Americans' behavior as "lawless proceedings" and an "outrage," the Americans viewed the British party's pursuit of deserters into U.S. settlements as criminal and were actually threatening to go to considerable trouble to submit them to state law.<sup>6</sup>

After this incident, Schoedde realized he had to combat desertion with tactics that did not attempt any direct use of force. He could not send any more pursuit parties of soldiers among American settlements. One option was to employ others, such as friendly New Yorkers or

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<sup>5</sup> C.T.A. Schoedde to E.B. Littlehales, Fort Ontario, August 15, 1793. E. A. Cruikshank, ed., *The correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 23; George Reed and Carol Reed, *Fort Ontario: Guardian of the North* (Charleston: Arcadia Publishing, 2000), 16.

<sup>6</sup> Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 23; for "outrage" see Simcoe to Allured Clarke, York, 19 Sept 1793, *ibid*, vol 2, 72; for "lawless proceedings" see Simcoe to George Hammond, York, 8 Sept 1793, *ibid*, vol 2, 50.

Native Americans, to make arrests on the British army's behalf. Schoedde initially felt that "an Indian will be considered as the most proper personage in all future pursuits after deserters." Perhaps he envisaged Native Americans as uniquely capable of moving within and between British and American jurisdictions without being fully subject to their laws and authorities. Or he may simply have suspected that Native Americans would have better success at capturing deserters because local Americans would be afraid to interfere with them. The Iroquois in the area were friendly to the British. During the American Revolution they had allied with New York Loyalists and had made Fort Ontario a shared base for local raiding.<sup>7</sup>

Upper Canada's Lieutenant Governor John Graves Simcoe – himself a Loyalist soldier and well acquainted with the difficulties of maintaining posts in American territory – urged Captain Schoedde to act with "discretion" and to develop "an intercourse of mutual civility" with the surrounding inhabitants. He would have to try to handle his desertion problem without breaking the peace and, since he was "not to pursue any deserters into the settled country," he would need to pretend to have an effective deterrent in place. "Every demonstration should be made to convince the soldiers that some plan has been agreed upon which will render the escape of any of those who should be so base as to desert impracticable in future." Simcoe added that if he could actually set in place such a plan with local American allies, so much the better. "Perhaps an arrangement may be made with some principal people, by which it might be their interest to be serviceable to the Garrison." The Lieutenant Governor knew that these instructions left Schoedde with tenuous control of his men. He hoped that either treaty arrangements would finally be made to turn over the posts on honorable terms, or that the New York government would control its settlers and recognize that "the post is purely Military, and as such is the object

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<sup>7</sup> Schoedde to Littlehales, *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 23; Reed and Reed, *Fort Ontario*, 19.

of national consideration, but by no means ought to become subject to Insults from any Individual which may lead to the most serious consequences.”<sup>8</sup>

The western posts' symbolic importance stood in contrast to their effective weakness on the ground, and the best way to avoid further insults to the empire was to minimize local conflicts that the British were likely to lose, including pursuit after deserters. At Fort Niagara, farther west in New York, Simcoe thought he would be more likely to get deserters back by offering a full pardon to any who voluntarily surrendered than he would by trying to get them arrested. Speaking more generally about the occupied western posts, the Lieutenant Governor concluded that “As the settlements of the United States approach to our present Posts, there is every appearance that Desertion will be so very prevalent, as of itself to be a good reason for the withdrawing from them all but a few Men sufficient to prevent Indian robbery & to certify the Commission of Hostilities should the United States venture upon so serious an Undertaking.” Preventative measures could be taken as well, by staffing the forts with disabled or elderly men, or those with Canadian families they would be unlikely to abandon. In order to retard desertion, the British made their already weak military presence deliberately weaker. The posts would be strawmen, propped up just enough to scare off thieves and to fire off a symbolic shot in case war commenced.<sup>9</sup>

With Simcoe's encouragement, Captain Schoedde experimented with tactics of persuasion and alliance at Fort Ontario, but these proved largely unsuccessful. He considered the incoming settlers to be “the scum of the States” and resented them for offering encouragement and protection to deserters. However, Schoedde did make an alliance with “the only decent man

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<sup>8</sup> Littlehales to Schoedde. York, 16 Sept 1793. *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 52-53; Simcoe to Hammond. York, 8 Sept 1793. *ibid*, 50.

<sup>9</sup> Simcoe to Lord Dorchester. York, 2 Dec 1793. *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 112.

among them,” a fellow German named Valkenburg. He “has on different occasions used persuasion with the deserters to return,” presumably by assuring them they would receive amnesty. None of the deserters took up this offer.

Valkenburg and Schoedde were more successful at scaring off prospective settlers. They used the threat of the Indian wars that engulfed the Ohio Country in the early 1790s. Valkenburg spread rumors that hostile Indians might come in their direction. Schoedde then promised that if they did, the British would keep them in check and give early warning to the settlers with whom they were friendly, provided those settlers accommodated the needs of the fort in their turn by keeping their settlements at an acceptable distance. This strategy worked temporarily, even though Schoedde privately admitted he thought it extremely unlikely that war parties from farther west would come anywhere near there. Manipulating the ‘savage’ contemporary image of Native Americans, Schoedde manufactured the deterrent he needed and convinced incoming Americans to give his fort space.<sup>10</sup>

However, local tensions soon undermined the possibilities of cooperation at Oswego. Valkenburg’s neighbors quickly noted his connection with the British and punished him for it. Regarding him as a disloyal informant, within a year hostile New Yorkers forced him to flee to the fort for protection and seized his land. A New York militia group lurked about the garrison “in the bushes” with firearms and cut off British communication with more distant settlers, though Schoedde reported that some of the better class of New York inhabitants “hope that their own Government will bring those Algerine Pirates, as they call them, to an account.” Though the situation was uncomfortable, Schoedde avoided outright hostilities, and the prospects for removing his troops from New York improved as British and American diplomats moved

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<sup>10</sup> Extract from Schoedde to Littlehales, 25 Sept 1793. *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 92.

forward with negotiations for the return of the western posts. By mid-1796 the British had transferred all of the posts to the U.S. army and withdrawn onto Canadian territory.<sup>11</sup>

Schoedde's efforts to stop desertion at Fort Ontario provide a template for many of the strategies that British and American officers would use, to differing degrees, throughout this study's time period. In attempting to retrieve deserters from foreign territory, an officer might try to use unilateral force by sending a pursuit party of soldiers out to make arrests. Alternatively, he might eschew direct responsibility by using a monetary reward system to convince other local groups -- particularly Native Americans or the other nation's friendly inhabitants -- to make arrests for him. If direct and indirect attempts to capture deserters provoked too much hostility, he might adopt more persuasive tactics, such as offering pardons to deserters who surrendered themselves. He might also search for cooperative allies and test the benefits of their support. Although all these tactics persisted through the mid-nineteenth century and beyond, their success and the frequency of their use changed over time. In the 1790s, officers largely relied on indirect and persuasive means to retrieve their deserters.

Even within Canadian territory, British officers worried that hunting for deserters among an indifferent or hostile local populace would be a losing proposition. In the winter of 1797, Lt. Colonel John de Bernière, commanding at the post of St Johns on the Richelieu River in Lower Canada, noted with apprehension that “a Spirit of desertion” was spreading. He was pessimistic about his chances of recovering many of the runaways. Several of the deserters were “Americans of the States,” perhaps Loyalists or Late Loyalists who had enlisted with the British. He expected them to find allies to shield them in nearby New York or Vermont. Although de Bernière observed “There were some Inhabitants on the Frontier near the Lake who are well

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<sup>11</sup> Schoedde to Simcoe. Fort Ontario, 25 May 1794. *The Correspondence of Lieut. Governor John Graves Simcoe*, vol 2, 248.



affected” to the army and who had already aided British pursuit parties, “a great majority of the Inhabitants are ill affected.”

It was not only the Americans along Lake Champlain whom he expected to make trouble, but French-Canadians as well. De Bernière, a Northern Irish Protestant of Huguenot descent, had no cultural connections or personal familiarity with the Acadians who had resettled during the 1780s along the two main roads that led south. However, he knew enough to suspect that they would be hostile to any British troops sent among them to intercept deserters before they reached the border. “This Acadie, I have heard, is inhabited by people well disposed to promote the Evil [of desertion].” He did not give up hope that he might convince some civilians to catch fleeing soldiers, but he concluded flatly that “In our present posture we make but vain efforts to recover our deserters.” Only a few weeks later, however, de Bernière had been pleasantly surprised in his dealings with the populace. Search parties of his soldiers “were assisted...by the Inhabitants, who are quite well disposed, but are the better to be set in motion and aided by our People.” In order to set civilians in motion, “reward has been regularly paid to those Inhabitants who have apprehended Deserters, & shall continue to be so.” Though he met with better success than he had initially expected, de Bernière still felt it would require his “utmost exertions...to suppress the Spirit of desertion, that has prevailed; and, I am sorry to say, prevails at this moment.”<sup>12</sup>

Despite de Bernière’s resolve to make every effort to curtail desertion, he avoided directly seizing deserters who had reached American territory. He and his sergeants, after

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<sup>12</sup> Lt. Col. de Bernière to Capt. James Green Military Secretary. St Johns, 30 July 1797. LAC, RG 8, C Series, reel C-3281, frames 326-330; de Bernière to Green. St Johns, 11 August 1797. LAC, RG 8, C Series, reel C-3281, frames 332-335. For de Bernière’s ancestry see Samuel A. Ashe, Samuel B. Weeks and Charles L. Van Noppen, eds., *Biographical History of North Carolina: From Colonial Times to the Present* (Greensboro: C.L. Van Noppen, 1908), vol 7, 252.

“pursuing deserters to the [border] line,” gave up the chase. At times they even sat down to share “infinite civility” with Major Rouse just across the border in New York. Rouse was a political refugee from Canada whose house was, according to the British Minister, a haven for deserters and other undesirables. British officers' restrained practices of pursuit helped to create a strong border that protected deserters from direct cross-border arrests. However, de Bernière undermined the border's strength indirectly. Though unwilling to order his own soldiers to recapture deserters on American land, he was willing to pay citizens of any nationality who delivered his missing soldiers back to him. He didn't ask any awkward questions about their legal right to do so. This stance encouraged illegal cross-border kidnappings.<sup>13</sup>

After only a year, de Bernière's policies faced a challenge from the neighboring American community at Plattsburgh, New York. In March 1798, a group of five civilians brought a British deserter to St Johns whom they had kidnapped from New York, saying that they had heard they would be “handsomely rewarded.” They complained when de Bernière paid them only “the usual sum” of ten pounds, plus expenses. Though de Bernière offered to inquire whether they were entitled to more money, the men refused to give him their names. Their reticence suggests that they wanted no record kept that might subject them to legal consequences or vigilante retaliation from aggravated Americans. De Bernière soon received an express letter from a concerned citizen of Plattsburgh, protesting the illegality of the kidnapping. De Bernière immediately disclaimed any knowledge of, or responsibility for, the actual use of force, saying that “the deserter was delivered me...without my previous knowledge of any step taken for the purpose of his apprehension.” De Bernière later reported that the three civilians primarily responsible for the kidnapping were New Yorkers, and that the two Canadians in the party had

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<sup>13</sup> De Bernière to James Green. St Johns, 27 Feb 1798. LAC, RG 8, C-3281, frame 348.

been their employees. His version of events placed the Americans in charge of the arrest that had occurred in their own territory.<sup>14</sup>

The New York citizen who wrote in protest took a firm stance against such violations of the border while maintaining a tone of gentlemanly solidarity. He rhetorically aligned himself with his British counterparts in opposition to the "rascals" who had carried out the arrest. Americans, he said, believed that British officers had no responsibility for the kidnapping, "Not only because we know them to be Gentlemen, but because we know they reverence the Law of Nations & do homage at the Shrine of Justice." Framing the case in these abstract and heightened terms transformed the arrest of one deserter into a matter of sovereign dignity. "Our Soil," he explained, "like that of Britain is Holy and whosoever treads on either, is Free." He suggested that only "the baser sort of Men, whose passions & views are very uncongenial with those of our respective Governments" would violate the sanctity of national ground. What policies should be adopted in response to deserters who came to the U.S., or who suffered kidnappings back to Canada, were not theirs to determine. He believed "the discussion does not belong to us" of the borderlands but rather to higher authorities. He felt sure that de Bernière would, were it his decision, return the kidnapped man as a sign that he did not intend to encourage kidnapping any more than the Americans intended to encourage desertion. But, declaring the matter out of their hands, the New York citizen made no actual demand for the restoration of the wronged deserter. He emphasized instead the importance of showing proper respect to national sovereignty.<sup>15</sup>

This borderland resident's admonitions exhibited all the characteristics that would define high-level diplomatic negotiations over transnational kidnappings throughout the nineteenth and

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<sup>14</sup> De Bernière to Green. St Johns. 1 & 3 Mar 1798. LAC, RG 8, C-3281, frames 355-359.

<sup>15</sup> Mr. Woolsey to de Bernière. Plattsburgh, 5 Mar 1798. LAC, RG 8, C-3281, frames 361-362.

early twentieth centuries. Bradley Miller has shown that an informal system of extradition by abduction operated across the U.S.-Canadian border after the War of 1812, and he identified a standard rubric of rituals that governments used to smooth over this type of controversy. He noted that "[a]mong elite policymakers these abductions were understood and dealt with first and foremost as violations of territorial sovereignty." The proper diplomatic response was to reaffirm the importance of respecting national jurisdictions and to declare that those who conducted the kidnappings acted without prior sanction or authorization. The individuals kidnapped might or might not be returned, but the insult to national rights had to be assuaged.<sup>16</sup>

Attention to the desertion controversies of the late eighteenth century shows that such diplomatic codes already operated during these earlier decades, and they were not the exclusive purview of federal or imperial elites. In his study, Miller contrasts what he calls the 'high law' standards of elite diplomacy with oppositional 'low law' borderland customs that legitimated kidnappings, particularly those conducted by a nation's own inhabitants as they seized and delivered fugitives back over the border. In desertion cases, however, some borderland inhabitants embraced the same diplomatic standards as did their higher governments. They denounced arrests conducted by residents of their own nation for the sake of rewards and refused to participate in informal extradition. Both Americans and Canadians living on the frontier could accord sovereignty the same importance as did high-ranking diplomats.

Citing their concern with upholding international law and treaties, town magistrates at Amherstburg, Upper Canada rejected a proposal to exchange deserters with Americans in Detroit in 1797. American General James Wilkinson petitioned them to cooperate in mutually returning runaway soldiers across the border, suggesting that such exchanges were necessary to maintain

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<sup>16</sup> Miller, "Emptying the Den of Thieves," 217, 221.

peace in their communities. If desertion weakened the troop strength of the U.S. and Canadian forts, he warned that an insurrection of French inhabitants and Native Americans might break out. He further claimed that deserter exchanges would be consonant with the principles of both the British imperial and American federal governments. U.S. soldiers who changed their loyalties should not find safe harbor in Canada, since offering them protection would violate "the fundamental Maxim in British Jurisprudence, that a subject cannot Dissolve his Allegiance at his Will." This was the controversial principle on which the British based practices of impressment. Furthermore, the Anglo-American Jay Treaty had already authorized the extradition of murderers and forgers, and Wilkinson tried to extend those terms by analogy to cover desertion. It made no sense to extradite lesser criminals while protecting more dangerous ones, and "if forgery be weighed against Desertion in all its dangerous consequences to King State or Community," deserters must be recognized as the worse criminals, since "a forgery may ruin an individual,—but a desertion may betray a Nation."<sup>17</sup>

Wilkinson's inventive arguments, which reflected traditions of 'legal imposture' in broader European culture, proved futile when Amherstburg's magistrates declined his petition. Though "nothing could afford us greater pleasure (were it in our power) than to give effectual remedy to the evil [of desertion]," they refused to round up or hand over U.S. deserters. They explained that "we do not find that our authority as civil Magistrates extends to the apprehending deserters of another State, however great our inclination may be." Positioning themselves as faithfully subordinate to "the existing Laws and Statutes of our Country," they concluded that

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<sup>17</sup> "General James Wilkinson of the United States Army, to the Justices of the Western District of Upper Canada." Detroit, 16 July, 1797. William R. Manning, ed., *Diplomatic Correspondence of the United States*, vol 1, 493-494. For 'legal posturing' see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010) 24-25, 113-116.

"the inferences you draw from...the [Jay] Treaty...[are] insufficient to authorise us to act upon them consistent with the Dignity and Honor of our Nation."<sup>18</sup>

Despite initially firm civil resistance to military policing across the borderline, army officers at Detroit and Amherstburg did briefly succeed in exchanging deserters before a fatally violent arrest derailed their prospects for cooperation. In 1798 the U.S. officer in command at Detroit gave permission for British soldiers to arrest some French-Canadian deserters on Michigan land. This gesture appears to have opened the door to occasional deserter exchanges between the neighboring garrisons, although many deserters in the area were still able to secure protection by crossing the border. In October 1800 a British sergeant, with the help of sympathetic American officers, arrested a Canadian deserter named Francis Pocquette who had taken shelter in Detroit. Pocquette violently resisted his abduction, swinging an axe at his attackers, and they retaliated by bayonetting him. He died of his wounds the following day, and the British officers at Amherstburg panicked at the prospect of being charged with murder. Civilians on both sides of the border protested the violence. "This I apprehend will be a Serious Business & those concerned required by the American Government to be delivered up for trial," a British resident in Detroit predicted. "I hope both Governments may put a stop to forcing Over Desarters from Either Side. Otherwise I fear it may be attended not only with the loss of several lives but also create Misunderstand[ing]s Which should in my Oppinion be prevented."<sup>19</sup>

Captain Hector McLean, the commanding British officer at Amherstburg, adopted the standard diplomatic line of disclaiming official responsibility and fell back on the principle that

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<sup>18</sup> "Unsigned letter from Sandwich, Canada, sent by W. Rae to General James Wilkinson of the United States Army." Sandwich, 28 July 1797. Manning, ed., *Diplomatic Correspondence*, vol 1, 496.

<sup>19</sup> Capt. Hector McLean to Major James Green. Amherstburg, 17 Aug 1798. *MPHC*, vol 20, 620-21; Peter Adrian to Governor St Clair. Detroit, 20 Oct 1800. *MPHC*, vol 20, 498-99; John Askin to the Honorable D. W. Smith Esqr. Detroit, 15 Oct 1800. Milo M. Quaife, ed., *The John Askin Papers*, (Detroit: Detroit Library Commission, 1931) vol 2, 316-317.

the border's legal division was sacrosanct. He denied that he had authorized the objectionable arrest and threw the culpability onto his subordinate officer, Sergeant Levy Cole. He reported to the British North American Military Secretary that, "[h]owever irregular this transaction...it was entirely without my knowledge or concurrence that any violence of the kind took place, & I verily believe that the Serjeant who is a very good man thought he was doing a meritorious act by apprehending a deserter, without adverting to the difference of doing so on foreign Ground." McLean claimed that the American military "wish to wink at these matters as they have frequently taken some of their deserters from this side & deliverd over some of ours, whom they had taken inside of their Garrison." Now that a violent incident had occurred, however, he promised his commanding general that he would send no British officers to make arrests on American land in the future. "Tho' no criminal act has been committed on this side," McLean noted, a Canadian grand jury had sent word of the murder to the imperial Committee of Council that ruled at York, Upper Canada. McLean expected their accusation "is there treated with ridicule as it cannot be taken cognizance of on this side [of the border]." The border, he suggested, should protect him and his soldiers from arrest for a crime committed outside Canada's jurisdiction in a way it had failed to protect Francis Pocquette.<sup>20</sup>

American authorities were somewhat hesitant to act, given what they knew about the local situation. Arthur St. Clair, governor of the Northwest Territory, wrote to Secretary of State James Madison informing him of the murder. St. Clair acknowledged that it was America's right under the Jay Treaty to request that Sergeant Cole, who had committed the stabbing, be extradited. However, St. Clair felt the situation was "delicate," and did not want to risk the "very serious consequences" – by which he likely meant calls for war from an angry American public –

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<sup>20</sup> Hector McLean to James Green. Amherstburg, 26 Oct 1800. *MPHC*, vol 23, 272.

that the British might provoke if they decided to support their officer and defend him from prosecution. St. Clair felt that "Where military posts are near each other, and desertion so easy, it can not well be otherwise than that difficulties will occur, and it is much to be wished that some agreement to deliver up deserters on both sides were entered into." When army officers took matters into their own hands, the risk of violent scandals, and consequently of war, increased.<sup>21</sup>

The legal processes that unfolded in the aftermath of Pocquette's murder re-emphasized that only higher authorities acting through established treaty provisions could pursue criminals across the line. Secretary Madison decided to request Sergeant Cole's extradition under the terms of the Jay Treaty. The Lieutenant-Governor of Upper Canada officially approved the request and sent Canadian authorities to arrest Cole and deliver him to an American officer. In a frantic farewell letter, Cole decried the hypocrisy of his superior officers, who first encouraged him to make arrests on foreign territory and then disavowed him. Pleadingly, he wrote: "see how faithfull I have Dun my Duty to government Running Night & Day after Deserters Fatigueing My self all most to De[a]th, Thinking that I Could Not Due to Much for my king, & the halter to be my End at Last." In cross-border incidents it was established procedure for superior officers to sacrifice their subordinates, and Sergeant Cole correctly believed that Captain McLean "has Laid the blame all on me thinking that I should hang, Rather then he should loos his Commission." Cole subsequently deserted and disappeared before he could be arrested and delivered to American authorities. The diplomacy surrounding his unfulfilled extradition proceedings nevertheless reaffirmed the legal meaning of the border.<sup>22</sup>

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<sup>21</sup> Governor St. Clair to the Secretary of State. Cincinnati, 9 Mar 1801. *MPHC*, vol 15, 532-33.

<sup>22</sup> Peter Hunter to James Madison. York, Upper Canada, 29 Aug 1801. LAC, RG 8, reel C-3523, frame 792; Military Secretary James Green to Lt. Col. McDonnell. Kingston, 6 Sept 1801. *ibid*, frame 796; Military Secretary James



In the United States at the turn of the nineteenth century the political character of the federal administration shifted, and Republican Party adherents might turn fresh suspicion on citizens who acted, in their view, as British lackeys within the United States by rounding up deserters from Canada. Near Black River, New York, resident Samuel Brown and a small group of accomplices violently kidnapped two British deserters and carried them to Canada in 1801 for the sake of reward money. A local Republican newspaper reported that, in response, a group of "the good people" of the Black Rock community formed themselves into a posse, arrested Brown and his associates, and initiated criminal proceedings against them. The Republican reporter asked, "May we not suspect there is a combination of some years standing with the British government; some traitorous citizens within the territory of the United States, who carry on this odious business[?]"

Viewing the conveyance of fugitive deserters to the British as part of the shameful Federalist legacy, this Republican commentator assumed that the new U.S. administration would prove itself more Anglophobic and more concerned with the vigilant protection of white men's personal freedom. It seemed clear to him in principle that Republican leadership should institute stronger measures to protect British deserters from being forced back to Canada. "If the former administration shewed a submissive predilection to the English and thought but little of these outrages against the citizens of the United States it is expected that under the new they will find all the security the constitution and laws enable the executive to afford them against acts so dishonorable to our government, and dangerous to the personal security of the individuals." However, in practice the treatment of international deserters turned in a very different direction

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Green to Mr. Lewis Bond. Fort Niagara, 6 Sept 1801. *ibid*, frame 796; Levy P. Cole to Capt. MacKenzie, 2 Oct 1801. LAC, RG 8, C-3045, frames 376-377; Alan Taylor, *Civil War of 1812*, 108.

during the following decade as the neighboring borderland armies increasingly worked together to undermine the protections that fugitive soldiers had previously enjoyed.<sup>23</sup>

*Reaching 'a proper understanding': A decade of unstable cooperation, 1802-1812*

A more successful phase of international deserter exchange began on the Niagara frontier in 1802. In October the commanding officer at British Fort George, Major Jasper Grant, was pleased to report that Tuscarora Native Americans, New York civilians, and a U.S. army lieutenant had all taken action to catch and return British deserters. Grant believed the American officers at Niagara would be willing to join him in more regular cooperation, since by returning each other's soldiers across the border they would discourage troops on both sides from attempting desertion. However, he cautiously sought higher authorization before approaching the Americans with such an offer. Lieutenant-General Peter Hunter, then serving as both the military and civil head of Upper Canada, told Grant to publicly reward the Native Americans and New Yorkers for their aid and to assure American military officers that the British were eager to mutually exchange deserters. The commanding U.S. officer at Fort Niagara in New York accepted this overture, although unlike his British counterparts he concealed his course of action from his superiors in the civil government. Possibly he did not believe he would receive support from the Republican leadership. Major Grant reported that the American commander "sent an Officer to me to apologize for not sending me a written answer, as he said, he did not wish, from the nature of their Government at present, to commit any thing in writing." On the Niagara frontier these officers' informal agreement, half authorized and half illicit, began to make deserters on both sides of the border vulnerable to recapture.<sup>24</sup>

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<sup>23</sup> *American Citizen and General Advertiser* (New York, NY) 4/3/1801, 2.

<sup>24</sup> Major Jasper Grant to Military Secretary James Green. Fort George, 16 Oct 1802. LAC, RG 8, C-3277, frames 1372-1374; Extract of letter from Military Secretary James Green to Major Jasper Grant. York, 20 October 1802.

Lieutenant-Governor Hunter strongly supported the new arrangement, but at first its operation was limited. For a few months Major Grant checked each step in his desertion arrests with Hunter, who encouraged him to return any newly arrived American deserters but also instructed that those runaway soldiers who had been living in Canada long enough to settle into their communities should be left alone. With Hunter's encouragement, Grant carried out several more cross-border arrests and exchanges. Within a year, Grant had moved on to a different posting and the new officer in command at Fort George sought similar cooperation with the Americans.<sup>25</sup>

At the same time, officers at other British army stations still felt unable to return U.S. deserters. At Amherstburg in 1803, the British commanding officer reported that the settlement was "swarming" with nearly eighty recent deserters from Detroit. Local residents were hiring some of them as servants and laborers. This community support for their presence extended to one of the three local justices of the peace, and his protection prevented military officers from doing anything to interfere with them. At St. Joseph Island further to the northwest, the commanding officer reported that when an American deserter arrived at his fort "I refused any assistance or protection, but did not take it upon me to detain him." He let the soldier go on his way, but asked for instructions as to whether he should help American officers to catch their deserters in the future.<sup>26</sup>

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LAC, RG 8, C-2773, frame 726; Jasper Grant to James Green. Fort George, 20 Nov, 1802. LAC, RG 8, C-3045, frames 503-505.

<sup>25</sup> Jasper Grant to James Green. Fort George, 26 Oct 1802. LAC, RG 8, C-3277, frames 1380-1381; James Green to Jasper Grant. York, 27 Oct 1802. LAC, RG 8, C-2773, frame 727; Jasper Grant to James Green. Fort George, 29 Nov 1802. RG 8, C-3277, frames 1390-1391; James Green to Jasper Grant. York, 5 Dec 1802. LAC, RG 8, C-2773, frame 727; Lt. Col. Sheaffe to Lt. General Hunter. Fort George, 2 June 1803. LAC, RG 8, C-3045, frames 609-610; *ibid*, 3 June 1803, frame 614; *ibid*, 10 June 1803, frames 618-619.

<sup>26</sup> John Vincent to James Green. Amherstburg, 12 May 1803. LAC, RG 8, C-3045, frame 589; Capt Clerk to James Green. St. Joseph Island, 25 May 1803. LAC, RG 8, C-3045, frames 600-601.

In response to such reports and inquiries, Lieutenant-Governor Hunter took steps in the summer of 1803 to make deserter exchanges a more consistent and widespread Canadian military policy. In his capacity as commander of the forces, he sent a series of very similar orders to the British frontier posts at Fort George (near Niagara), Amherstburg (near Detroit), and St. Joseph Island (near Michilimackinac) detailing new measures that would change the border's practical meaning for deserters. He observed to the commanding officer at Amherstburg that "it would undoubtedly tend in a great measure to prevent Desertion, if a proper understanding could be established between you and the Officer Commanding the American Garrison, respecting the delivering them up reciprocally." However, Hunter was aware that such an understanding would be illegal and instructed his officers to offer only "such secret assistance, as you may consider prudent, without causing any noise or disturbance." He warned them not to move onto "American Ground" to catch deserters unless they were assured of "the perfect concurrence" of the local American commanding officers in such arrests. He encouraged his officers to keep using monetary rewards to give U.S. inhabitants incentive to arrest British deserters themselves. Hunter told his officers to contact him if any Canadian judiciary authorities voiced objections so that he could use his position to smooth things over. He concluded by going beyond the usual diplomatic keystone of reciprocity, instructing that even if U.S. officers felt unable to return British deserters, "you will still deliver back their Deserters, whenever you can do it with that degree of propriety which an arrangement of this sort requires." Hunter thus committed his military subordinates to a remarkably accommodating stance that represented a significant departure from the policies of earlier years in which both Canadians and Americans had recognized the border as a shield for deserters.<sup>27</sup>

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<sup>27</sup> James Green to Col. Vincent. York, 4 June 1803. LAC, RG 8, C-3524, frames 284-285; James Green to Lt. Col, Sheaffe. York, 4 June 1803. *ibid*, frame 285; James Green to Capt. Clerk. York, 13 June 1803. *ibid*, frame 291.

The implementation of Hunter's cooperative plan was uneven. Initially at Amherstburg the British continued to rely largely on Native American rather than U.S. assistance in hunting and capturing deserters. The American army went through a string of temporary commanders at Detroit, which made it challenging to establish the kind of cooperation Hunter envisioned. Among British officers, some, such as Isaac Brock, may have remained unaware of Hunter's wishes. In December 1803 Brock declined to return U.S. sailors who had deserted an American naval ship on Lake Ontario. These deserters had immediately joined the crew of a British ship on the same waterway, and their irritated former captain told Brock that "if we could find no method of procuring men for our vessels but by distressing his government he would be under the necessity of retaliating." Despite these frictions, cooperation did grow between British and American army officers. The commander at St. Joseph Island promised his American counterpart at Michilimackinac that "no exertions on our part should be wanting to render him every assistance in apprehending deserters." At Fort George, Hunter's orders respecting desertion became part of the archive of important papers that were passed to each new officer who took command at the post, creating greater continuity of policy despite continued changes in personnel.<sup>28</sup>

These friendly practices of deserter exchange had barely become established before they began to encounter challenges and ruptures, some more serious than others. In 1804 a civilian grand jury in New York decided that forcing British deserters out of American territory was illegal and instructed the military commander at Fort Niagara to inform the British officers across the river that he could no longer cooperate with them. He regretfully wrote that "he had it

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<sup>28</sup> John Vincent to James Green. Amherstburg, 10 Sept 1803. LAC, RG 8, C-3045, frame 662; Isaac Brock to James Green. Fort George, 22 Dec 1803. *ibid*, frames 694-695; Capt. Clerk to James Green. St. Joseph Island, 9 July 1805. *ibid*, frame 837; Jasper Grant to President Alexander Grant. Fort George, 12 Feb 1806. LAC, RG 8, C-2773, frame 729.

not in his power to assist or in any manner countenance, in apprehending deserters" from Canada. However, this ruling was not enforced for long and the exchange system quickly revived. This seems to indicate that Niagara military officers were acting with tacit but effective community support. A far more serious problem arose on the Canadian side in August 1805 when Lieutenant-Governor Hunter unexpectedly died, robbing the fledgling system of its strongest and most highly-placed defender.<sup>29</sup>

Only a few months later, in February 1806, the cooperative arrangements at Niagara began to fall apart. Major Jasper Grant, back in command at Fort George, arrested two American deserters at the request of a U.S. officer in New York. Grant delayed sending the men back across the border because the river was blocked with ice, and also because he wished to submit a report and receive authorization to go ahead with the exchange. The men remained under guard in Canada for several days, and this gave civil authorities time to act. A local Canadian woman, the partner of one of the deserters ("he calls her his Wife, but she is supposed not to be married to him") enlisted a lawyer to issue writs of habeas corpus for both the imprisoned men.<sup>30</sup>

Major Grant, fearing that he might be charged with making false arrests, quickly took action to cover himself. He wrote to his superior military officer requesting instructions. He also independently addressed an inquiry to President Alexander Grant, General Hunter's successor as the highest civil authority in Upper Canada, requesting him to clarify whether he viewed the arrest and delivery of American deserters across the border as legitimate. Grant felt trapped between conflicting imperatives and did not want the responsibility of choosing which to disobey. "If I disobey Lt Genl Hunters orders of 1802 and 1803...respecting American

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<sup>29</sup> John Vincent to James Green. Fort George, 14 Nov 1804. LAC, RG 8, C-2773, frame 687.

<sup>30</sup> Jasper Grant to James Green. Fort George, 2 May 1806. *ibid*, frames 744-747.

Deserters, I commit myself in a Military Capacity. If I comply with them, and enforce them, a Civil Action will be instantly commenced against me.”<sup>31</sup>

This kind of formal request for explicit authorization endangered the entire system, because deserter exchanges relied on speed, discretion, and the tacit agreement of civil authorities to look the other way. Grant's superior officer, Colonel Bowes, was upset to learn that Grant had dawdled in his arrests, thereby opening a window for civil obstruction, and had then made matters worse by inviting high-level judicial and executive scrutiny. Bowes felt that Grant's clear duty had been to "immediately act upon the very distinct and pointed Orders you have received from Lt. General Hunter regarding American Deserters -- had you done so, your Conduct must have been fully Approved, and vast trouble and very serious inconvenience to the Service would have been prevented." Bowes knew that the local civil officers of Niagara were reluctant to disrupt the exchange system. The Canadian lawyer who pressed to have the deserters released from arrest at the same time confessed himself "sensible of the reciprocal wish of both Garrisons to cultivate a mutual understanding in cases of this nature, and I as an individual see the expediency. Yet in my public situation, I am bound to do my endeavour to afford protection to those who of right demand it.” Once Grant allowed his prisoners or their local allies time enough to demand civil aid, the informal military exchange system tottered. Colonel Bowes, no longer able to rely on the studied neglect of higher officials, wrote to the President of Upper Canada urging him to recognize the benefits the informal arrangement

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<sup>31</sup> Jasper Grant to James Green. Fort George, 8 Mar 1806. *ibid*, frames 723-724, 729-730; James Grant to Lt. Col. Proctor. Fort George, 28 Feb 1806. *ibid*, frame 734.

produced in reducing desertion. Bowes asked him to give his permission for arrests to continue.<sup>32</sup>

The habeas corpus appeal of the American deserters at Fort George never did get them into a civil court, but the high-level internal review that their arrest launched did worse damage than any single trial could have. Inquiries to the President from Major Grant and Colonel Bowes resulted in newly explicit confirmation from the supreme Upper Canadian provincial officers that it was legally indefensible to exchange deserters across the border. They concluded that no one in the province had any authority to continue supporting the arrangement, despite its obvious usefulness in maintaining army discipline and thereby promoting the public defense. The provincial Attorney General and the Surgeon General agreed that only the crimes specifically enumerated in Jay's Treaty were legally extraditable, but at the same time "We most sincerely regret that the Law (as we conceive) does not afford redress, in a Case which so essentially affects his Majesty's Service. It is for the British, as well as for the American Legislatures to consider, if any, and what remedy ought to be applied, to remove an Evil which must press equally on both Countries." Upper Canadian President Alexander Grant reluctantly concluded that since "I consider it would be improper for me to depart from [the verdict of the Law Officers of the Crown], I have to regret the want of authority on my part, to give orders for the arresting of Deserters from the American Service, being American Subjects, when found within this Province, for the purpose of sending them back [to the U.S.] for Trial for the crime of Desertion." Where General Hunter had seemed prepared to extend his authority beyond the

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<sup>32</sup> James Green to Jasper Grant. Quebec, 7 Apr 1806. LAC, RG 8, C-3524, frames 813-814; William Dickson to Jasper Grant. Niagara, 7 Feb 1806. LAC, RG 8, C-2773, frame 728; Col. Bowes to President Alexander Grant. Quebec, 12 Apr 1806. LAC, RG 8, C-3524, frames 815-816.



strict limits of the law to deal with desertion, his successor declined to do the same. Deserters in the Niagara area could once again use the border to escape from their army service.<sup>33</sup>

Deserters along other portions of the frontier had more mixed luck. The Michigan Territory judiciary took action against transnational arrests in 1805, convicting two British officers of assault and battery after they tried to drag one of their deserters out of Detroit. The acting governor of Michigan Territory also viewed the matter seriously, describing the incident as "not only...an outrage upon the private rights and peace of our Citizens, but...an insult upon our Government, and an act of hostility against our nation." However, the American military officers of Detroit did not support the strong tone taken against the British, nor did the territory's permanent governor. The friendly relations between the neighboring garrisons suffered no permanent breach. Five years later practices of deserter exchange were still locally accepted and the American commanding officer at Detroit felt confident he could recapture a U.S. soldier who had fled to Amherstburg. "The British Officers will not interfere if I take him in their presence and I shall do the same with respect to their deserters that are now at Detroit."<sup>34</sup>

Further east on the frontier, a frustrated Canadian inhabitant of the Johnstown district just across from Ogdensburg, New York, wrote to the Upper Canadian governor in 1809 deploring the level of social acceptance he observed for these kind of kidnappings. He reported that armed American officers had seized three U.S. deserters who were "under the protection of the British

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<sup>33</sup> Alexander Grant to Jasper Grant. York, 20 Feb 1806. LAC, RG 8, C-2773, frame 731; Attorney General Thomas Scott and Surgeon General D'Arcy Boulton to Alexander Grant. York, 22 May 1806. *ibid*, frames 751-753; Alexander Grant to Colonel Bowes. York, 23 May 1806. *ibid*, frames 748-750.

<sup>34</sup> Alexander Campbell to James Green. Amherstburg, 5 Jan 1806. LAC, RG 8, C-3045, frames 893-895; William Wirt Blume, ed., *Transactions of the Supreme Court of the Territory of Michigan, 1805-1836* (Ann Arbor: University of Michigan Press, 1935) vol 1, 58-61; *ibid*, vol 2, 84-90; Alexander Campbell to James Green. Amherstburg, 31 May 1806. LAC, RG 8, C-3045, frames 924-927; Stanley Griswold to [Alexander Campbell] Commanding Officer at Fort Malden. Detroit, 16 Dec 1805. *ibid*, frame 930; Jasper Grant to James Green. Amherstburg, 19 Oct 1806. *ibid*, frames 985-987; Jacob Kingsbury Papers, mss., Letterbook (1810) vol 15. Burton Historical Collection, Detroit Public Library.

Laws" within Canadian territory. The pseudonymous Canadian writer – styling himself “A Friend to the British Constitution” – regretted that “this outrage upon our liberties has occurred without the least notice been taken of it by any person in the District.” During the decade before the War of 1812, some communities along the border developed attitudes of tolerance, or at least indifference, toward military incursions that reclaimed international deserters.<sup>35</sup>

When an arrest turned violent, however, military raids against deserters who sheltered behind the border attracted heightened public attention and nearly universal condemnation. In 1809, U.S. Captain Bennett and some of his infantry regiment were traveling down the St. Lawrence River between Ogdensburg and Oswego, New York, when weather forced them to dock unexpectedly on the Canadian side of the river outside Elizabethtown (modern-day Brockville). Learning that a deserter from his regiment named Isaac Underhill had taken up residence as the town’s schoolmaster, Bennett ordered a pursuit party to retrieve him. They broke into the school, tied up Underhill and started to drag him to the river. Some local Canadians appeared to be running to his aid when he managed to break away from his abductors. A U.S. sergeant shot him and left him dying on the road. Retreating to their boat, the pursuit party informed Bennett of what had occurred, and they quickly crossed to the American side of the river. The incident, once publicized, was denounced by commentators on both sides of the border.<sup>36</sup>

In order to justify the tragedy, Captain Bennett presented a simplified version of the complicated history of informal extradition on the northern frontier. His self-justifying claims elided the limits, challenges, and breakdowns that characterized borderland responses to

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<sup>35</sup> ‘A Friend to the British Constitution’ to Lieutenant Governor Francis Gore. District of Johnstown, 4 Feb 1809. Civil Secretary’s Correspondence, Upper Canada, Upper Canada Sundries, January-June 1809, RG 5, A1, vol 9, p 3669-3670, reel C-4505, frame 606-607.

<sup>36</sup> Harvey Strum, “A Most Cruel Murder: the Isaac Underhill Affair, 1809.” *Ontario History* 80.4 (1988), 293-310.

desertion. He implied that transnational arrests and exchanges were ubiquitous, homogenous, and unchallenged, evidence of a secret military consensus operating in opposition to civilian legalism. Bennett and a local Canadian justice of the peace, Henry Arnold, exchanged correspondence relating to the shooting. Their letters succinctly addressed the central question of principle – had Bennett any right to reclaim an American deserter on Canadian land? – while also being emotionally charged enough to merit reprinting in American and Canadian newspapers.

U.S. Captain Bennett's argument was arresting and unrepentant, and it mirrored the logic behind British impressment:

I am the responsible person: what was done was in obedience to my orders, and I am proud that my sergeant executed the orders with so much spirit and promptness. The man [Underhill] had not become a subject of Great-Britain, and why should your people be so anxious to protect a deserter and a felon? What I did, I considered my duty, and on like occasion would do again, and will at all times take my men where and when I can, if it can be accomplished without injury to the inhabitants of the country or place I take them from.

Henry Arnold's reply likewise encapsulated the argument for the inviolability of sovereign territory, so that the two disputants seemed to reenact the contemporary naval impressment debate with reversed national positions:

Whether the deceased was a subject of his majesty or not, is wholly out of the question; he was within the province of Upper Canada, and consequently under the protection of the laws, and neither you nor any other person had a right to deprive him of his liberty without legal process. Depend upon it, sir, that should you, or your petty officer, on whose act you *pride* yourself so highly, be taken within the province, that an adequate punishment, according to law, will be inflicted, notwithstanding your pretended military authority.<sup>37</sup>

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<sup>37</sup> *Montreal Courant* (Montreal, LC) 5/22/1809; *American Citizen* (New York, NY) 6/6/09; *Columbian Centinel* (Boston, MA) 6/7/1809; *Middlebury Mercury* (Middlebury, VT) 6/7/1809; *Connecticut Journal and Advertiser* (New Haven, CT) 6/8/09; *Federal Republican* (Baltimore, MD) 6/9/1809; *Republican Watch-Tower* (New York, NY) 6/9/1809; *New York Journal* (New York, NY) 6/10/1809; *The Sun* (Dover, NH) 6/10/09; *Portland Gazette and Maine Advertiser* (Portland, ME) 6/12/09; *The Independent American* (Ballston Spa, NY) 6/13/1809; *Salem Gazette* (Salem, MA) 6/13/09; *Pennsylvania Herald* (Easton, PA) 6/14/1809; *Norfolk Repository* (Dedham, MA) 6/15/09; *Farmer's Repository* (Charlestown, WV) 6/16/1809; *New Bedford Mercury* (New Bedford, MA) 6/16/09; *The Reporter* (Battleboro, VT) 6/17/1809; *Washington Reporter* (Washington, PA) 6/19/1809; *Greenfield Gazette*

The popular press of Canada and America agreed with Arnold that territorial and jurisdictional sovereignty were inviolable and that Bennett had possessed no right to try to remove a deserter from Canadian land. Partisan politics made some American newspapers tend to portray Bennett's crime as dwarfed by the greater infamies of England (Republican papers), while others stressed the hypocrisy of Americans who attacked Britain's behavior on the seas while committing similar transgressions on land (Federalist papers). One Republican newspaper tried to discredit the Canadian justice of the peace, Henry Arnold, by printing an unfounded rumor that he was the son of the notorious traitor Benedict Arnold. The staunchly Federalist *New York Evening Post* mocked and refuted this rumor, but the specious story showed that the controversy was striking deeply-felt cultural chords related to the memories of Anglo-American war and questions of martial honor and betrayal.<sup>38</sup>

Almost all public commentators ultimately agreed that Bennett's principles were indefensible. One of the kindest evaluations suggested mitigating factors. He was "a young inexperienced officer, perhaps not very conversant with the law of nations, and acting under a zeal which under a more judicious direction, might lead to conduct honorable & glorious, [but he] unhappily conceived it to be his duty and his right to seize the deserter any where." Less generous assessments denounced "the false idea of duty and the erroneous conduct" of the "military sprig." An editorial insisted that the ground upon which Americans could claim

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(Greenfield, MA) 6/19/09; *The Olive Branch* (Norwich, NY) 6/19/09; *Hagers-Town Gazette* (Hagers-Town, MD) 6/20/09.

<sup>38</sup> The Republican *Aurora* (Philadelphia, PA) prefaced its coverage of the case with an article that stressed the long history of British crimes against deserters and its outrages against U.S. sovereignty, and this commentary was reprinted by *The New York Journal* (New York, NY) 6/10/09; *The Farmer's Repository* (Charles Town, West Virginia) 6/16/1809; *Washington Reporter* (Washington, PA) 6/19/09; *American Mercury* (Hartford, CT) 6/22/09; *Suffolk Gazette* (Sag Harbor, NY) 6/24/09. See also the Republican paper *Essex Register* (Salem, MA) 6/17/09. For the Benedict Arnold rumors and refutations, see *The Northern Whig* (Hudson, NY) 6/27/09 and 7/4/09; *Public Advertiser* (New York, NY), 11/7/1809.

superiority to the British was precisely in that “we act at least with a decorum more consistent, with the laws of nations and the rights of jurisdiction.”<sup>39</sup>

Bennett was placed under arrest – the initial warrant did not mention murder, but rather “an outrage, committed by a party of your men, acting under your orders on the rights and sovereignty of a nation at peace with the United States” – and when he faced court martial he argued not that his principle was correct but that it was common. His pursuit of the deserter onto foreign territory had been “neither novel nor unprecedented.” A number of U.S. officers testified to particular incidents in which soldiers on both sides had pursued deserters deep into each other’s territories. Bennett’s portrayal of frontier army procedure contained elements of truth but did not offer an accurate or complete account of the constellation of practices surrounding international desertion. The overall impression built up by his trial gave a simplified picture of frontier militaries, suggesting that they never recognized the sovereignty of borders or experienced legal limits, breakdowns or conflicts in their cooperative practices. “On the trial of Capt. Bennet,” a New York newspaper summarized, “it was given in evidence, that there had been an understanding between the American and British officers commanding on the frontiers to afford mutual aid in the recovery of deserters.” On that basis Bennett was released with a mild reprimand and restored to his command.<sup>40</sup>

In order to protect himself, Bennett and his allies at trial presented a homogenous frontier history in which martial agreements operated successfully all along the border and officers could

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<sup>39</sup> “Letter from Oswegatchie,” *The Public Advertiser* (New York, NY) 6/9/1809, 2; “Desertion to Canada,” *New York Journal*, (New York, NY) 6/10/1809, 2; *The Tickler* (Philadelphia, PA) 11/15/09, 4.

<sup>40</sup> For the order for Bennett’s arrest, see *The Supporter* (Chillicothe, OH) 6/13/09; *Ontario Repository* (Canandaigua, NY) 11/21/1809. News of Bennett’s restoration to his command prompted the Federalist paper *The New York Evening Post* to write an article rebuking U.S. hypocrisy in condemning British outrages while excusing Bennett’s crime, see *ibid*, 11/5/09, 2. The highly critical article was reprinted by *The Balance, and New-York State Journal* (Albany, NY) 11/14/09; *The Repertory* (Boston, MA) 11/14/09; *The Tickler* (Philadelphia, PA) 11/15/09; *Middlebury Mercury* (Middlebury, VT) 11/22/09.

assume their right to arrest deserters wherever they found them. The reality was less clear cut. Though cooperative military practices did increase in the first decade of the nineteenth century, they were repeatedly fractured by local challenges. Bennett's frontier was a defensive generalization that this chapter attempts to retire in favor of a more complicated account of the variety of values, strategies and challenges that officers and civilians encountered in building their borders. Gentlemanly military cooperation, unsanctioned military raids, military persuasion and pardon when the use force was deemed illegitimate, civilian arrests for the sake of rewards, and civilian resistance in defense of deserters were all tactics that had co-existed since the border's inception, and would continue to co-exist through the antebellum decades.<sup>41</sup>

#### *After the War: Mixed Strategies and Liminal Spaces*

The vast majority of desertions throughout this period went unchallenged and unpublicized, but the scattering of international controversies that public print, army correspondence, or diplomatic records have preserved shed light on frontier inhabitants' attempts to reevaluate their borders in the aftermath of North America's second Anglo-American war. While the pre-war period was defined by fairly clear chronological patterns, with early resistance to desertion arrests giving way to a decade of imperfect but recurrent cooperation, the post-war period defies easy categorization. Desertion controversies did not disappear after the war. Some military and civilian borderland residents tried to extract deserters out of each other's territories, while others mobilized to protect deserters from their pursuers. The pool of post-war cases

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<sup>41</sup> Harvey Strum's article on the Underhill incident exemplifies the impression created by the Bennett court martial: "Civilian officials on both sides of the border, however, were unaware of the understandings between American and British officers concerning the hot pursuit of deserters. Although the American government did not claim the right to pursue and apprehend deserters on British soil, the American and British military had worked out an informal arrangement to permit pursuit of deserters for a distance of fifty miles within each other's territory. Along the border, civilian control of the military had its limitations. This is another example of how the actual life along the border differed from the high diplomacy negotiated in London and Washington." Strum, "A Most Cruel Murder," 257.

available for study is small, with only slightly more than twenty known incidents between 1815 and 1860, but within that sample a few patterns are noticeable. A cluster of incidents occurred during the first years of restored peace from 1815 to 1822 as borderland militaries tested what strategies would work in the post-war milieu. Apart from purely persuasive and peaceful tactics, efforts to reclaim deserters met resistance from local communities and the popular press.

As the population along the border increased and internal improvements made travel between the U.S. and Canada easier, soldiers found more opportunities to desert and officers faced more obstacles to getting them back. The U.S. government gradually withdrew most of its troops from the northern border and closed many frontier posts, leaving British officers with fewer like-minded military men with whom to exchange favors. The discretion and secrecy that protected informal arrangements from legal or popular attention also became harder to maintain as the number of locally accessible civil magistrates and public newspapers multiplied within growing settlements, towns, and cities. However, army officers still pursued deserters, sometimes exploiting liminal spaces – particularly waterways – where lines of jurisdiction were hazy and only loosely enforced. From the mid-1820s to the mid-1830s, almost no reports about desertion controversies have surfaced. This may indicate that pursuits remained largely water-bound and that trespasses onto foreign soil grew increasingly rare.

However, territorial trespasses experienced a resurgence in the later antebellum years and desertion arrests kept generating debates, never fully resolved, about how those living on the borderline should go about defending their national rights and regional communities. The Canadian Rebellions, beginning in 1837, sparked border troubles that lasted through the early 1840s and marked a period of increased illegal raiding. During these years, desertion controversies became one focal point for self-conscious expressions of borderland identity.

Though the remainder of the period from 1843 to 1860 saw only a handful of attempted international desertion arrests, they continued to reflect the mixed strategies inherited from earlier decades. By 1860, military practices of pursuit still had not settled themselves into regularized patterns, nor had they disappeared. They remained occasional features of borderland life rather than common occurrences, but the weighty international implications they carried could give them outsized importance in the eyes of borderland residents.

In the immediate aftermath of the War of 1812, non-violent international searches and attempts to peacefully persuade runaway soldiers to return proved acceptable to some frontier inhabitants. In the summer of 1815, British military officers became concerned that American 'crimps' – men who bribed soldiers to desert – were luring enlisted men from Canada to fill the ranks of the U.S. army. Following a common post-war practice, the British government issued a blanket pardon to any soldiers who were willing to return to the British army. The commander at Prescott, Upper Canada, sent one of his officers into Ogdensburg, New York to search for deserters in order to inform them of the amnesty. Despite the recent wartime hostilities, local New Yorkers "gave no obstruction to the officer, but on the contrary some directed him w[h]ere to go" to find British deserters. However, these New Yorkers "did not hide that they would oppose their being taken by force." Despite this evidence of a local willingness to cooperate with tactics that remained persuasive rather than coercive, British officers in Prescott soon received orders to stop sending their soldiers into New York looking for deserters for fear of sparking any "Discord" that might interrupt the newly established peace.<sup>42</sup>

At a higher level, diplomacy surrounding crimping also reflected tolerance for peaceful or persuasive efforts to reclaim deserters. The British Chargé d'Affaires in Washington made an

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<sup>42</sup> Louis Grant to Major Gen. Robinson. Prescott, 16 May 1815. LAC, RG 8, C-2774, frame 291; Major Gen Robinson to Lt. Col. Foster. Kingston, 19 May 1815. *ibid*, frame 293.



official complaint that crimps, many of whom were American army recruiting officers, had effected "the seduction of British soldiers from their allegiance" at various points along the frontier. He felt no hesitation in informing the American government that British officers in New Brunswick had sent a search party into Maine to try to recover the soldiers who had been bribed away from their service. Rather than rebuking the British for pursuing their deserters in American territory, the U.S. Secretary of State made no objection to their search, probably because they had not attempted any arrests. He promised on the part of the U.S. administration to enforce orders against the "dishonorable" practice of crimping. Both sides agreed that it was unacceptable to enter each other's territory to persuade foreign soldiers to desert. It was acceptable, however, to enter each other's territory to persuade missing soldiers to return from desertion. Persuasive appeals, including published proclamations of pardon, amicably circulated on both sides of the border.<sup>43</sup>

Army officers continued to pay rewards to civilians who delivered deserters from one nation to the other, but newspapers publicized and condemned the practice. In 1816 a newspaper in Buffalo, New York reported that a U.S. citizen, frustrated with a British deserter who had fallen into his debt, forced the deserter back to Upper Canada. The citizen called on a U.S. constable to join him, giving the arrest, transportation, and surrender of the deserter the "color of legal process." He then collected his reward money from the British. Reportedly, this "outrageous proceeding" aroused public indignation and calls circulated for the American constable and civilian who had delivered the deserter to be criminally charged. Similar practices received public censure when they operated in the opposite direction, from Canada to the U.S.

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<sup>43</sup> Anthony St. John Baker, British Chargé d'Affaires ad interim at Washington, to James Monroe, U.S. Sect. of State, Philadelphia, 31 July 1815. Manning, ed., *Diplomatic Correspondence of the United States*, vol 1, doc. 530, 724-727; James Monroe to Anthony St. John Baker, *ibid*, doc. 180, 234.

In 1820 a Montreal newspaper alleged that local Canadians were kidnapping U.S. deserters for the sake of profit. "We were surprized to learn that some of His Majesty's liege subjects of this vicinity should have disgraced themselves in the dirty work of seizing American deserters in the night and forcing them back to the American Garrison from whence they had seen fit to decamp." Even when the use of force against foreign deserters was conducted by their own citizens or subjects, borderland commentators publicly disapproved.<sup>44</sup>

Foreign officers and soldiers who crossed the border to directly arrest deserters also encountered firm opposition. In 1816 a British naval officer, Alexander Vidal, pursued a group of deserting sailors into Detroit. He arrested one of them and sent him back to his ship. A group of citizens at a nearby tavern learned of Vidal's actions and surrounded him to prevent him from continuing his search for the remaining sailors. They turned him over to the Michigan territorial governor, Lewis Cass, who placed him under arrest. Cass framed the issues at stake in the usual diplomatic terms. Any protection owed to deserters was based, not on their own merits or rights, but rather on those of the American nation. "I am confident," the governor declared, "there is no other Disposition to protect them than is necessary to the protection of one of the most essential attributes of National sovereignty," the right to make national law coterminous with national territory. The Michigan territorial court convicted Vidal of riot, and his superior officers paid a heavy fine on his behalf.<sup>45</sup>

Vidal's case forecast that cooperative arrangements for exchanging deserters between the neighboring militaries in Detroit and Amherstburg would not be reinstated after the war.

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<sup>44</sup>"A Base Transaction." *The Columbian* (New York, NY) 3/15/1816, 2. Reprinted from the *Niagara Journal* (Buffalo, NY) 3/5/1816; *The American* (New York, NY) 8/15/1820, 2. Reprinted from *The Canadian Spectator* (Montreal, LC).

<sup>45</sup> *MPHC*, vol 16 (1890), 238-251. Quotation from Governor Cass to Commodore Owen. Detroit, 7 Sept 1815. *ibid*, 250; Alan Taylor, *Civil War of 1812*, 434.

However, the memory of the earlier decade of cooperation in deserter capture and exchange, even as prone to challenge and disruption as it had been, may have influenced army officers in Detroit. Recalling the incident nearly twenty years later, Vidal claimed that while he was under arrest a group of U.S. army officers "all heartily sympathized with him and agreed that they might, without thinking, have acted similarly in violating a foreign territory when sent after 'a scoundrel of a deserter.'" In a region where officers from both armies had grown accustomed to making informal cross-border arrests, attitudes of solidarity toward one another lingered.<sup>46</sup>

A new American military post at Rouse's Point, New York, where there was no pre-war history of cooperative deserter exchanges, became the base for more unilateral and violent action. In 1818, U.S. soldiers launched aggressive cross-border raids after deserters into Odelltown, Lower Canada. Odelltown was one of the most Anglocentric and Loyalist enclaves in the predominately French province, and these qualities may have attracted American hostility. It was at the house of one of the founding family that a sudden attack took place. A local witness swore that a group of twenty to thirty U.S. soldiers broke into Joseph J. Odell's home one evening "& by force dragged thereout three men by the names of John Adams – Abel Moore & Nathaniel Babie towards the [border] Lines...the party beat Moore – Adams & Babie (whom they called American Deserters) violently with Clubs." The American soldiers carried their prisoners out of Canada unopposed and deposited them in the guardhouse at Rouse's Point. There were several Canadian civilians present at the New York fort when the raiding party

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<sup>46</sup> Vidal's reflections are related in the travelogue of a New York tourist who said that he had a friendly discussion with Vidal at Detroit in November 1833, and that the British officer entertained the company with his story about his post-war trial for attempting to kidnap deserters. Charles Fenno Hoffman, *A Winter in the West* (New York: Harper & Brothers, 1835) vol 1, 115-120 (quote from page 118).

returned. One of them swore that the attack had been officially authorized, since the U.S. colonel in command "then and there...told s[ai]d party of soldiers that they had done well."<sup>47</sup>

A British lieutenant in the Odelltown militia wrote an impassioned complaint about the incident, painting a portrait of longstanding American harassment and making an appeal to international law. "This practice of marauding," he alleged,

has become so prevalent since the arrival of their troops at the new Fort [at Rouse's Point] that from the excessively abusive language & threatenings made use of by those parties of midnight ruffians such as 'swearing vehemently that where ever they find a Deserter or know them to remain they will burn & destroy the properties & houses of those who employ them as Labourers or harbour them' – they even go so far as to threaten their lives.

In a personal visit to Rouse's Point, the Canadian militia captain rebuked the American commander, "stating to him how highly derogatory to the Law of Nations these outrageous Acts of Violence committed by his Party were."<sup>48</sup>

The Niagara region had a history of pre-war cooperation in regard to desertion but the communities there experienced particularly bitter wartime losses, and it was not immediately clear whether hostile or cooperative impulses would return to prominence after the war. An 1822 incident showed that some officers and inhabitants remained open to tactics of exchange and accommodation. A British infantry officer was drilling his men on the Canadian shore of the Niagara River when an American deserter rowed across from U.S. Fort Niagara. Rather than welcoming this new arrival, the British officer arrested him and held him on the beach until an army officer from New York could row over and retrieve him. *The Geneva Palladium* newspaper in New York reported that "after being detained a few hours, he was escorted to a

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<sup>47</sup> Deposition of William Greeves, 31 July 1818. LAC, RG 8, C-3171, frame 738; Deposition of Frances B Warner and James Tolman, 7 August 1818. *ibid*, frame 743.

<sup>48</sup> Lieutenant James Drennan to Lieut Col William Lindsay, 1st Battalion Township Militia, 5 Aug 1818. *ibid*, frames 729-730.

boat from Fort Niagara, (at the point of the bayonet,) and thus carried back to his post.” On the U.S. side, this friendly gesture on the part of the British merited appreciation. The *Palladium's* reporter acknowledged that “Whether it was strictly legal or not we cannot say,” but nevertheless “we presume it will have a good effect” in discouraging desertion. The writer for this local paper went so far as to publicly propose a more regular informal arrangement, very similar to those practiced before the war. “Suppose there should be a mutual understanding upon both sides of the frontier, to deliver up deserters?”<sup>49</sup>

The Canadian press, however, condemned the British officer’s actions, not out of concern for the rights of the man who had been sent back to face punishment – “we have little fellow feeling for a deserter of any description” – but because, in attempting to accommodate Americans, he had insulted Canadian sovereignty. “[W]e are at a loss to know by what authority an officer commanding on this frontier, took upon himself to transport any person from this province.” The local editorialist clarified the specifics of sovereign space as interpreted by the Canadian community, observing that the shore was the accepted line of territorial demarcation. As such, “any person who sets his foot on shore, within the province, was under the protection of the laws of the land; we are very certain that has been the principle acted upon, on both sides of the river, ever since it became the line between two independent nations.” The Canadian article called for a grand jury to investigate grounds for prosecuting the British officer so as to nip this “dangerous precedent” in the bud.<sup>50</sup>

Though shorelines might be militantly policed, waterways remained spaces of contested sovereignty within which the pursuit of deserters could be interpreted in multiple ways. At Fort George in July 1819, a British deserter named Barnes removed his uniform and dove into the

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<sup>49</sup> *Geneva Palladium* (Geneva, NY) 9/18/1822, 3.

<sup>50</sup> *The Gleaner and Niagara Newspaper* (Niagara-on-the-Lake, Upper Canada) 8/24/1822.

Niagara River, swimming for the New York shore. Sergeant Major Duff commandeered a rowboat and quickly pursued. However, Duff soon saw a man in a canoe from the American side of the river moving toward the deserter. Duff believed he held claim over the fleeing soldier so long as they remained on the water. He threatened the incoming American, regarding him as a trespasser. “[F]earing he might succeed in Baffeling my Exertions, I called out to him that if he attempted to put a hand upon him (Barnes) I would shoot him, on which he immediately put about and left him.”

An American eyewitness on the opposite shore regarded the same incident with a very different perspective. What he saw in the water was not a deserter, but simply "a man swimming across the Niagara river towards Youngstown[, New York]." So long as Barnes was out of his uniform, sympathetic observers could characterize him as an unknown man in distress rather than a soldier attempting a military crime. The American witness specified that “[a] canoe put off from Youngstown to take him up, but on being fired at three times, when about one third the width of the river from the American shore...the canoe returned.” The American witness mentally extended the line of American sovereignty into the river. He imagined that the official boundary line would divide the river in half, which is why he clarified that the swimmer had already crossed two-thirds of the way. By defining American territory in such terms, he turned Duff’s pursuit into an aggressive violation of sovereignty.

Duff himself was anxious to avoid any such violation, and his different geographical interpretation served to justify his actions on the river. He recognized American sovereignty as beginning on the American shoreline, and he was determined to keep Barnes from reaching it. “[A]s Barnes was fast approaching the opposite Bank I fired a Shot at him in hopes of Intimidating to Surrender, on this he continued to Swim with Increased Exertion, and [on] my

again loading I was fired on with Ball by (I think) the Inhabitants of Youngs town.” In Duff’s mind his shot had been aimed at a legitimate target: a British deserter in the territorial limbo of the river. But the Youngstown New Yorkers interpreted Duff’s shot as being aimed at them. In particular, some believed that British soldiers and sentries were shooting at the American who had brought his canoe up to Barnes and tried to help him. “The fire which was commenced upon the man in the canoe, who was evidently actuated solely by motives of humanity in endeavoring to save the life of a man whom he conceived in danger of drowning,” an American witness insisted, “created much sensation among the inhabitants of Youngstown.”

Sergeant Major Duff, now under fire himself, began to panic and protest. “I called to the said Inhabitants that such an Act was Unmanly it was Unfair as I was not taking the Man out of their Country.” Duff’s reproach illustrated that he regarded the river as a borderless space. Regardless of how close they were to the U.S. shore, taking a deserter from the water was not, he believed, equivalent to taking him from “their Country.” In the end, Duff reported that “with much flattery and threatening I succeeded in getting Barnes into the Boat without ever having touched their Shore.” For him, the landline set the limit to legitimate pursuit. The British and their captured deserter returned to their fort, though not before “an Artillery Man in the Clothing of the United States Army ran to the point of Land nearest the Boat and fired at us again, at the same time giving us a Deal of abusive Language about the Land of Liberty.”<sup>51</sup>

The argument that pursuit was legitimate so long as it remained on the water proved to be acceptable to many officials. One of the American agents of an international boundary commission, charged under the Treaty of Ghent with determining the official international boundary line through the northern frontier’s land and water, coincidentally visited Fort George

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<sup>51</sup> Sergeant Major James Duff to Col. Johnston. Fort George, 15 July 1819. LAC, RG 8, C-2774, frames 913-915; Deposition of James Stewart, 4 Nov 1819. *ibid*, frames 959-960.

in Upper Canada the very next day and heard the story from Sergeant Major Duff. Recording the account in his diary, he noted that the deserter “had swam more than half way across when a boat from our shore put out to save him, upon which the British fired upon their deserter.” Though the Treaty of Ghent specified that borderland rivers would be divided between Canada and the U.S. at their mid-points, the diarist made no comment on the violation of American jurisdiction. He noted instead that “The deserter was taken however before he reached the shore and thus ended a skirmish that might have led to serious difficulties.” Though, due to the nature of his work, he was unlikely to imagine that American sovereignty was synonymous with the American shoreline, he seemed to acknowledge that in this case it was better to behave as if it were and avoid further conflict. The British chargé d’affaires in Washington, D.C., complained to the American government about the incident. Eventually the American military commander at Niagara disassociated himself from those who had fired at the British officer in pursuit of his deserter on the water. In addressing the lieutenant governor of Upper Canada, the American commander at Fort Niagara in New York felt “confident that you will be disposed to view it as one of those incidents, which will occasionally elude the most rigid prudence.”<sup>52</sup>

In 1819 an American captain faced a similar conundrum while sailing the Detroit River between Michigan and Upper Canada, and the question of his culpability again depended on how local residents interpreted the meaning of sovereignty on the water. Captain Grosvenor, a U.S. Infantry officer, was transporting new recruits to Michigan in a schooner. He had just passed the British fort at Amherstburg when some of his recruits spotted two British soldiers walking after their ship along the Canadian shore. A small group of soldiers from Grosvenor’s schooner took

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<sup>52</sup> Robert McElroy and Thomas Riggs, eds. *The Unfortified Boundary: A Diary of the First Survey of the Canadian Boundary Line from St. Regis to Lake of the Woods by Major Joseph Delafield* (New York: Privately printed, 1943), 243; General James Brown to Sir Peregrine Maitland. 15 Dec 1819. LAC, RG 8, C-2774, frame 963.



a rowboat over to them. The Canadian soldiers waded into the water, climbed aboard the rowboat and returned to the schooner, eventually disembarking at Detroit with everyone else. A few days later Captain Grosvenor wrote that “some doubts are expressed as to the propriety of my conduct,” suggesting that some residents or military officers in Detroit at this time still did not favor facilitating British desertion.

Grosvenor requested a Court of Inquiry to clear his name and placed full responsibility for the incident on his subordinates. He called on the ship’s mate and other officers to witness that as soon as they’d seen the British soldiers, he had given orders that no one was to approach the Canadian shore. He had then gone to the ship’s cabin and remained unaware that any of his men were taking a rowboat out to pick up the Canadians. This may have been a deliberate refusal on his part designed to provide him with plausible deniability while giving his subordinates tacit permission to act, or he may actually have expected his crew to obey his ban against approaching the deserters in Canada. Once he came back on deck, in any case, he was presented with a fait accompli. The two men were aboard, and he had to decide what to do with them.

Grosvenor began publicly rehearsing legalistic excuses, knowing that any action he took – whether delivering the deserters to America or surrendering them back to Canada – could be regarded as unjustifiable depending on what view was taken of his authority to navigate the questionable sovereignty of the river. One of the schooner's crew recalled that “Capt Grosvenor expressed much dissatisfaction at their being on board, and said that if he was not afraid of a prosecution, on arriving at Detroit, he would order them to be set on [the Canadian] shore.” Grosvenor suspected that his fellow Americans might prosecute him for forcibly returning the deserters across the river, despite the fact that they were all still in the middle of the water and no

one had set foot on American land. By reaching the schooner it could be argued that they had reached American territory, as certainly the War of 1812 had established that the American government viewed merchant and naval ships as extensions of American territory. Grosvenor may also have thought that he would seem unpatriotic if he sent soldiers back to Canada of his own accord without being pressured with a demand from some officials on their side.

Yet, departing from the principles of 1812, he did not maintain that the schooner constituted a legally safe asylum. “After you reported to me, that two men were on board, supposed to be Deserters,” Grosvenor questioned the ship’s mate under oath, “did I not go on deck and say that if any one should come for them, I would give them up, saying that they had no business there?” He declared he would not return them to Canada on his own initiative, but he would surrender them if asked. This was quite a different stance to the intransigent one that had normally been adopted by American ship captains toward British officials searching for deserters before and during the war.

Grosvenor’s Court of Inquiry spent considerable time determining whether his schooner had been in American waters when he decided to let the deserters remain on board. Eventually, they decided that the boat had been on the U.S. side of the central channel that they believed represented the international line through the Detroit River. Deciding that Grosvenor was not culpable for delivering the British deserters from American water where he first encountered them to American land, the Court nonetheless reproached him for failing to court-martial those among his crew who had rowed through Canadian water to pick the soldiers up on the opposite shore. In their view, those soldiers had violated Canadian sovereignty. Grosvenor’s permissive

behavior toward the perpetrators, however, was typical. Movements from shore to shore either in pursuit of deserters or in aid of them were not usually punished.<sup>53</sup>

Shore to shore pursuits purportedly became a rallying point for public action on the Niagara frontier. In 1832, the Reverend Isaac Fidler recalled that on a visit to Youngstown, New York, he had heard "a violent out-cry, which proceeded from a boat in the middle of the stream." An Irish deserter from the American army was rowing toward Canada, and a group of U.S. officers from Fort Niagara chased after him in their own boat. Fidler, observing the chase, apparently imagined that the international border lay somewhere in the water. He commented that the deserter "had scarcely reached the Canadian boundary before his pursuers were close upon him." Still on the river, probably quite near shore, this deserter yelled for help, and "[h]is vociferations...so affected the Canadians, flocking together from all quarters, that a number of them rushed into the water, and saved the fugitive from further molestation." Residents saw their action as a defense of their territory, on which the American pursuers were trespassing, as "the Canadians thereupon told the Yankees that unless they instantly desisted and retired within their own jurisdiction, they should be thrown into the water." Fidler suggested that such angry and protective displays had become a common feature of the post-war Niagara frontier.<sup>54</sup>

Native American reservations could also constitute patches of irregular sovereignty between British and American territories, leaving Native Americans at liberty to intervene in desertion incidents. In 1840 a Canadian newspaper reported that two British privates made it as far as St. Regis, a reservation in northern New York, and "directed their course to the land of sympathy," meaning the United States. However, one of the Mohawk chiefs organized a pursuit

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<sup>53</sup> National Archives and Records Administration, RG 153: Records of the Office of the Judge Advocate General (Army), Court Martial Case Files, 1809-1894, File I35.

<sup>54</sup> Reverend Isaac Fidler. *Observations on Professions, Literature, Manners, and Emigration in the United States and Canada, Made During a Residence There in 1832* (New York: J. & J. Harper, 1833), 129-130.

party, captured the soldiers while they were still on reservation land, and then returned them to Canada. The Native Americans “received a handsome reward” from the British “for their meritorious trouble.” A Canadian reporter predicted the impossibility of controlling Native American movement, believing Americans could not stop them from making further arrests on the scattered islands off the New York shore. “The Indians have been so well paid for their good conduct in this instance that deserters hereafter will stand a poor chance of escaping, particularly as they [Native Americans] inhabit the different islands in this neighborhood, and are always out fishing and hunting.” Native Americans could benefit from the flow of deserters in both directions. In 1824 a U.S. officer in Green Bay commented that the American army hired Native Americans to conduct most deserter pursuits along that section of the frontier. In 1832 a mass desertion from Michigan’s Fort Gratiot to escape a cholera epidemic had propelled forty American deserters into thick, unsettled forests as they struggled to reach the settlements of Upper Canada. A newspaper report alleged that “the deserters were plundered by the Indians.”<sup>55</sup>

Liminal spaces presented unique problems as weakly defended lines of sovereignty left opportunity open for violence. An officer in pursuit of deserters could get away with using force on an international waterway to a degree that all sides would have disavowed on land. In August 1837, a British soldier killed a fleeing deserter in the Niagara River very near the American shore. Local New York papers reported that when a sailboat carrying four deserters from Toronto “had almost touched the [U.S.] shore, near Fort Niagara,” a pursuing British soldier had aimed a musket from his boat and threatened to fire if the deserters did not surrender. American newspapers emphasized the illegality of this threat. They reported that a United States army officer from Fort Niagara was standing on the New York shore watching the boat chase, and that

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<sup>55</sup> *New York Spectator* (New York, NY), 9/9/1840, 1; *ibid.*, 8/27/1824, 3; *Commercial Advertiser* (New York, NY) 8/14/1832, 2.

he shouted a warning against using violence within American jurisdiction: "don't fire, sir! the men are in American waters." Ignoring this warning, one of the pursuing British soldiers put a bullet through the forehead of the nearest deserter, Private James Holland. When Holland collapsed the other three deserters dove desperately out of their boat into the river and quickly arrived on the U.S. shore. The British did not attempt to pursue them once they had reached land, but towed their abandoned sailboat and the corpse inside it back to Fort Mississauga in Upper Canada.<sup>56</sup>

Local newspapers on both sides of the border reported the incident, and their accounts of the homicide differed substantially. A Montreal paper admitted the shooting had occurred within sixty yards of the U.S. shore, but said nothing about any violation of American jurisdiction on the water. The Canadian writer emphasized instead that Holland had been armed and had pointed a gun at his pursuers. This version of events suggested that the British soldiers who had ordered and carried out the shooting had been acting in self-defense. A local Canadian coroner's inquest ruled the case a justifiable homicide. American newspapers in New York, Ohio, New Hampshire and Michigan publicized the incident and expected that it would be recognized as an international affront. A New York paper noted that "As the man was killed within the jurisdiction of this state, it is probable that the affair will undergo an investigation by the proper authorities," while a Michigan paper tersely warned that "The affair may make trouble."<sup>57</sup>

A New Hampshire editorialist turned attention from the violation of national boundaries to the violation of peacetime ethics, deploring the use of lethal force. "[H]ow brutalized must the

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<sup>56</sup> "Military Homicide." *Commercial Advertiser* (New York, NY) 8/29/1837, 2.

<sup>57</sup> *Montreal Gazette* article reprinted in *Commercial Advertiser* (New York, NY) 9/4/1837, 1; *Albany Evening Journal* (Albany, NY) 8/31/1837, 2; *New York Spectator* (New York, NY) 9/11/1837, 4; *Elyria Republican and Working Men's Advocate* (Elyria, OH) 9/13/1837, 3; *New Bedford Gazette and Courier* (New Bedford, MA) 9/4/1837, 3; *Commercial Advertiser* (New York, NY) 8/29/1837, 2; *Kalamazoo Gazette* (Kalamazoo, Michigan) 9/23/1837, 2.

mind of that man be, who would thus murder, by shooting down in cold-blood, a poor fugitive whom he was pursuing merely for the sake of a paltry reward!" Taking this as proof that the British army was fundamentally flawed in the harsh and unfeeling regime it imposed on its soldiers, the New Hampshire editorialist drew a more humane portrait of American army standards. "We suppose that no American soldier could now be induced to *shoot* a deserter, in time of peace: though he might apprehend and return him, for the sake of the reward." On both territorial and humanitarian grounds, American writers protested the shooting.<sup>58</sup>

Previous international incidents in which a deserter had been killed by soldiers trying to recapture him – the Pocquette case in 1800 and the Underhill case in 1809 – had resulted in high-level diplomatic protests, but no such protests occurred after the Holland case. Had the killing occurred on American land rather than American water, it is unlikely that federal authorities would have overlooked it. In addition to its coverage in Canadian and border state papers, the affair was reported in Virginia's *Alexandria Gazette*, published just outside Washington, D.C., but it is unclear whether any government authorities noted the news. No officials mentioned it in diplomatic correspondence. A customary tolerance for pursuits from shore to shore, or a simple lack of clear responsibility for resolving the crime, may have dissuaded borderland military or civil authorities from officially reporting the case to the State Department.<sup>59</sup>

Within a few months, however, a much larger crisis arose that would focus high levels of federal and imperial concern on acts of cross-border violence on both land and water. It would also prompt frontier residents to express their unique perspective on events, shaped by their regional identity. They expressed determination to maintain the good order of their own communities by demanding respect for a strong border. Desertion cases played a role in

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<sup>58</sup> *Portsmouth Journal* (Portsmouth, NH) 9/16/1837, 1.

<sup>59</sup> *Alexandria Gazette* (Alexandria, VA) 9/1/1837, 2.

prompting local inhabitants to define their views of international law, of their metropolitan governments, and of themselves.

### *Border troubles and borderland mentalities*

In November 1837, a rebellion broke out in Lower Canada. The rebellion quickly failed, and refugees from the conflict began arriving in the U.S. borderlands, where many were sympathetically received. Further unsuccessful attempts at revolution in Upper and Lower Canada the following year increased the influx of political dissidents into U.S. border states. A vigilante movement of "Patriot" Americans began staging raids into Canada and ferrying ammunition and other materiel to the rebels. A series of minor but highly publicized clashes took place between loyal Canadian militia and groups of vigilantes composed of Americans and refugee Canadians. The riverine burnings of the U.S. ship *Caroline* and the British ship *Sir Robert Peel* contributed to growing fears of war.

Ruminating on the alarming state of affairs along the border in 1838, a newspaper editorialist in Buffalo, New York suggested that the British deserter Holland's murder the previous summer had led to the widespread collapse of peace along the frontier. Although untenable as an objective historical claim, this intensely local perspective on the causes and chronology of international conflict hints at a distinctive borderland mentality. Some residents living at the edge of enforceable law saw it as particularly important to stand firm against foreign incursions before they spiraled out of control. In their view, good order could only be maintained by deterring abuses from the neighboring nation, not through local action, but through higher international channels.

Effective peacekeeping required the federal government to offer prompt resistance to any trespass. The Buffalo editorialist quoted a local resident who railed against "...the great

impropriety and danger of overlooking and neglecting to demand prompt satisfaction for a first insult and violation of our neutrality.'" That first insult had been, in his view, the killing of a British deserter so near the American shore as to constitute an "insult" to "the natural dignity and honor, and the rights of our flag." The Buffalo editorialist claimed that had the federal government vigorously "demanded prompt reparation," rather than neglecting the affairs of the border and giving the impression that crimes could be committed there with impunity, the nascent international troubles would not have progressed further. Neither Canadians nor Americans would have turned vigilante. "[W]e should have had no Caroline outrages and murders," he argued, "no Sir Robert Peel burnings and robberies...no marching and counter marching of armed Canadian refugees and abettors along our lines. -- But our government having utterly neglected their duty...a long train of evils has followed." Without government intervention to resolve the killing of Holland through lawful channels, ruffians on both sides of the border had escalated their violence.<sup>60</sup>

A decade later, a newspaper contributor in Maine articulated a self-conscious borderland identity that similarly coalesced around the need to preserve peace by calling on federal authority to inflexibly maintain the nation's sovereign rights. He noted that a British consul had tried to have deserting British sailors arrested in the border town of Eastport, Maine. In one instance a local constable had cooperated and forcibly returned a British sailor to his ship, and though he "acted without legal authority, as everybody well understood," the citizens had not intervened to stop this arrest. However, Eastport residents did protest when the British later stopped a ship that had left harbor from Maine in order to extract another deserter from aboard. They refused to

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<sup>60</sup> *Buffalo Journal* article reprinted in *Jamestown Journal* (Jamestown, NY) 6/20/1838, 2.



believe that international comity could justify the "outrage" of impressing a British deserter from a U.S. ship, with all the old wartime associations wrapped up in that particular affront.

The Maine editorialist reporting the case emphasized that the people of Maine were not hostile toward the British or Canadians. They protested when the British overstepped their authority because they wanted to preserve friendly relations.

We of the borders desire to pursue our avocations by day in peace, and to sleep in our beds at night. But we can do neither, unless instantly and peremptorily, and in tones as emphatic as we can use, we discountenance every aggression of British subjects upon our rights, [and] every aggression of our own people upon the rights of our colonial neighbors. History is full of accounts of border strifes. The marauder's club, and marauder's torch have had victims every where. Warned by experience, and remembering that human nature is the same world over, we demand redress when injured, both because we are entitled to it, and because we would *check and keep down all pretence for retaliation*.

In this view, illegal international desertion arrests were dangerous not only because they insulted national sovereignty, but because they were likely to spark retaliatory mob action in borderland communities.<sup>61</sup>

In other contested deserter arrests during times of border strife, local writers split their concern between international outrages and the lawless internal commotion they provoked within their towns. A Detroit butcher, Paul Maples, illegally arrested one of his employees in 1839. Having hired a British army deserter from Canada, Maples kept him at work for several months until he owed him a hefty sum. Rather than paying him, Maples got him drunk and ferried him back to his barracks in Canada where he tried to claim the usual reward money for turning in a runaway soldier. Apparently the British officers there viewed his actions as pusillanimous, possibly because Maples was British himself and might be considered to be betraying a comrade. They reportedly punished Maples rather than rewarding him, and "allowed him to be whipped

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<sup>61</sup> *Portland Weekly Advertiser* (Portland, Maine) 5/30/1848, 1.

and cropped for his pains." After Maples came back to Detroit, a rumor circulated that the deserter he had delivered to the British was going to be shot. Angry local citizens confronted Maples, and "certain individuals took the wretch, who could sell the life of a brother man for a few paltry dollars, rode him on a rail, shaved his head, tarred and sanded it, and he was finally lodged in jail to protect him from annihilation."

American commentators approved of neither Maples nor his persecutors. Under the headline "LYNCH LAW," the Detroit news article reporting the incident described the "thrill of horror" that all good citizens must feel when contemplating the unruly behavior of the vigilantes who punished Maples. At the same time, the reporter acknowledged that there had been no legal way to redress Maples' crime, which made his rough treatment understandable, if troubling. "We do not, we cannot commend such acts on the part of any portion of our citizens, but we will repeat our words, that there are villanies committed for which the law makes no provision." The local writer concluded that Maples must be protected from further violence, but also expelled from the community. After kidnapping a British deserter out of their land, "he cannot live here."<sup>62</sup>

Borderland commentators called for the interposition of law and executive authority in response to international arrests and raids. During the border troubles from 1837 to 1842, military officers sent parties of men into each other's territories to extract deserters and other criminals with greater frequency than they had in decades. Some Americans responded with force. Maples was not the only man tarred and beaten for attempting to deliver a deserter to Canada. In Ogdensburg, New York in 1839 a party of visiting Canadians allegedly plotted to get a deserter drunk and smuggle him over the line. Soon they "were surrounded by a large

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<sup>62</sup> *Detroit Morning Post* 6/5/1839, reprinted in *Albany Evening Journal* (Albany, NY) 8/16/1839, 2.

concourse of people, who hauled them about quite unceremoniously, and treated them to a good coat of tar." Again, the newspaper reporter describing this outburst of vigilantism expressed disapproval toward both the Canadian would-be kidnappers and the Americans who punished them. "There either is or should be, some legal method of punishing persons who attempt such outrages upon the rights of the people under our protection, and the law should be appealed to instead of the mob; as however deserving such intruders may be of summary punishment, it ill becomes our citizens to inflict it without due course of law."<sup>63</sup>

Newspaper editorialists were not the only borderland voices seeking legal means to put a stop to deserter kidnappings. In 1840 an anonymous U.S. citizen wrote a letter from Gibraltar, a town in southern Michigan abutting the Detroit River, to ask the state governor for help. He said that British troops from Canada habitually patrolled Michigan territory with their look-out parties. When a desertion occurred, they searched the local towns and the U.S. islands in the Detroit River. These searches and pursuits could turn violent, since "they have Come Over under Arms and Searched Peoples Houses and in One Instance they took a man off the I[s]land by Force of arms wounding the man very Severely." Despite this violence, the anonymous citizen's requests to the governor were moderate and legalistic. "I Desire to know Wheter this be Legal or not[,] if not[,] I would wish you would Make Some Enquiries Concerning it and take Such Steps in Regard to it as you may think Propper." Although influenced by the bitterness of recent struggles, the citizen reiterated the idea that peace depended on a resolute observance of the border's division. "We Desire no quarrel with our Neighbors but as the Child Said to the adder we would Like to have them keep their Own Side."<sup>64</sup>

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<sup>63</sup> *Ogdensburg Times* article reprinted in *Milwaukee Sentinel*, (Milwaukee, WI) 7/23/1839, 2; *National Gazette* (Philadelphia, PA) 7/4/1839, 3.

<sup>64</sup> William Woodbridge Papers, "A Citizen of Gibralter," 3 Feb 1840. Burton Historical Collection, Detroit Public Library.

Neither American nor Canadian military forces kept to their own side, however, and while army officers of both nations sometimes worked together cooperatively to arrest river pirates and vigilantes, they also unilaterally invaded across the border to pursue political and military criminals. In late July 1839, a Vermont newspaper alleged that one of the Canadian volunteer regiments stationed in Nova Scotia had sent a hundred troops across the border into Vermont in pursuit of three deserters. Arriving at the town of Highgate, the Canadian soldiers and officers had "taken possession of the woods, fields and roads" and started making arrests. They seized two of their deserters and chased the remaining one into a lake. Rather than surrender, this last deserter reportedly drowned himself. The Canadians then withdrew back across the border with their prisoners and the corpse of the dead soldier.<sup>65</sup>

From a Canadian perspective, this military action appeared legitimate. A writer for the *Montreal Herald*, picking up the story, assumed that Canadian officers would not have resorted to such measures without permission from higher imperial authorities. He concluded that "our government has given instructions...to pursue deserters and brigands into the States, and catch them wherever they may be found." The Montreal writer felt that such action was justified and necessary since retaking fugitives from within the United States "will be a death blow to active sympathy." 'Sympathy' was the contemporary shorthand used to describe American support for continuing attacks against Canada in the aftermath of the Rebellions. The borderland perspective of a loyal Canadian led him to assume that British pursuits of deserters into U.S. territory were imperially authorized actions necessary for re-establishing respect for the border and restoring peace.<sup>66</sup>

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<sup>65</sup> *New York Evening Post* (New York, NY) 7/31/1839, 2.

<sup>66</sup> Article from *The Montreal Herald* quoted in *Philadelphia Inquirer* (Philadelphia, PA) 8/5/1839, 2.

Yet even in this period of heightened tension, some borderland residents voluntarily returned deserters in the name of restoring international goodwill. *The Upper Canada Herald* reported that in 1839 an American steamboat captain found a British deserter aboard who had stowed away when the ship had been docked at Kingston, Upper Canada. Although already eight or nine miles into Lake Ontario and heading for the American shipyard at Sacket's Harbor when the stowaway was discovered, this U.S. captain turned his boat around and returned the deserter to British military authorities. In Kingston, a local reporter publicized the story with acclaim. "This conduct is highly praiseworthy, as it not only maintains good faith, though at some loss, but also will effectually stop such desertions." He also reported that the American captain had offered continuing cooperation in the future, promising that even "if he had reached Sackets [Harbor, New York] before discovering the man, he would have brought him back, and will do so with any others, if any more try the game again."<sup>67</sup>

Reminiscent of the informal arrangements Canadian and American officers had shared during the decade before 1812, the ship captain's accommodating offer seemed so surprising during the period of border troubles that a Toronto paper alleged the story was untrue. Their reporter explained that the supposed 'deserter' was really a loyal soldier who had fallen asleep aboard the U.S. ship and, upon waking, insisted on being returned to his post. The merit for his return belonged to him rather than to the U.S. ship captain. A New York paper ridiculed this version of events, but in the process commented approvingly on the voluntary return of deserters between nations. Praising the steamboat captain for having done "a civil thing" for the Canadians, the paper characterized his delivery of the deserter as representing "a very proper spirit of comity and good-will." Probably the continuing vagueness of sovereignty lines on

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<sup>67</sup> *The Upper Canada Herald* (Kingston, UC) 7/16/1839, 2.

transnational waterways made it possible for this incident to win approval on both sides of the border.<sup>68</sup>

The vigilantism following the Canadian rebellions drew to a close with the ratification of the Webster-Ashburton Treaty in August 1842, a resolution that arrived none too soon for communities disturbed by international raiding. The same day that the U.S. Congress voted to approve the treaty, a New York paper reported that a party of British soldiers from New Brunswick had tried to kidnap two deserters from a farm in Houlton, Maine. Approaching the homestead farm at midnight, the British hoped to quickly seize their men as they slept and then return to Canada undetected. But, a U.S. newspaper reported, "the citizens got wind of the intent of the [British] Captain, for though it was midnight they mustered in considerable force, and ordered the Captain to surrender." The New Brunswick officer and his men escaped back across the border without submitting to arrest, but in their flight left behind their weapons and equipment. Mocking the British officer in charge of the failed abduction, the American reporter asked, "Will he not be knighted for this splendid exploit?"<sup>69</sup>

Rather than relying on frontier officers' illegal efforts to reclaim fugitive deserters across the border, British imperial politicians increasingly approached the issue of desertion with preventative measures. Beginning in the mid-1830s, the British secretary at war, Lord Howick, studied the army's desertion problem in North America and made concerted attempts at reform. He tried to improve the living conditions of ordinary soldiers, raising their pay and establishing recreational facilities such as barrack libraries devoted to the rank and file. The hope was that desertion could be reduced by breaking up the boredom and isolation of frontier service. The British army also created a specialized force, the Royal Canadian Rifles, to man the frontier

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<sup>68</sup> *Commercial Advertiser* (New York, NY) 8/12/1839, 2.

<sup>69</sup> *New York Daily Tribune* (New York, NY) 8/22/1842, 2.

posts nearest the United States. This unit only recruited experienced veterans who had already amassed at least fifteen years of faithful military service, and they were to receive relatively generous pensions as additional inducements to complete their terms of service. The British in Canada also instituted better border patrols, with troops regularly stationed along the main roads that led to the United States and plainclothes army police working to detect and arrest deserters before they crossed the international line. Several officers also secured greater freedom in making arrests by winning appointments as justices of the peace concurrent with their military service. Statistically, these strategies made no significant dent in the British army's Canadian desertion numbers. Nevertheless, they illustrated that the imperial government had largely given up on reclaiming soldiers from American territory and focused their efforts on prevention instead.<sup>70</sup>

The outbreak of raids had died down by the early 1840s, but cross-border conflicts over desertion continued to crop up from time to time during the following decades. No consistent set of borderland customs operated to regularize these international arrests. In 1847 a group of Hudson's Bay Company police kidnapped several British army deserters who had taken shelter at a French-American fur trading post in the Upper Mississippi Sioux country. According to a local resident, the leading fur trader "was asked by the [British] party whether he would resist them in their attempt to take the deserters, and he replied that they had no right, under any pretence, to come upon American soil, but that he would not resist them, neither could they expect him to afford them any aid." This posture of non-interference was not one embraced by the whole fur

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<sup>70</sup> Peter Burroughs, "Tackling Army Desertion in British North America," 37-68; Thomas Bourke to Military Secretary. Halifax, 12 Feb 1849. LAC, RG 8, C-3064, frame 394; Major Edward White to Assistant Adjutant General at Montreal. Isle aux Noix, 28 Aug 1841. LAC, RG 8, C-3063, frame 246; Thomas Murdock to Capt. B. Taylor. Kingston, 9 Oct 1841. *ibid*, frame 254; Lt. Col. Charles Taylor to Major Dickson. St Johns, 15 Dec 1841. *ibid*, frame 281.

trading community. Some American residents reportedly viewed the deserters' abduction as "one of a series of high handed measures taken by the Hudson Bay Company which, if not checked by our government, and that speedily, will result in serious difficulties with our citizens, who are not of a temper to submit to the illegal encroachments of any foreign monopoly, however formidable."<sup>71</sup>

Another British raiding party met stronger resistance in 1857, when they broke into a private home on Carlton Island in the St. Lawrence River near upstate New York. A deserter was sheltering there, and when a group of British soldiers rushed in to arrest him, the daughter of the house allegedly locked the door and trapped everyone inside. According to a New York newspaper, she "declared that if the four [soldiers] who were left inside took the deserter out, they would have to pass over her dead body." Expecting the men of the house to arrive at any moment, the British decided to withdraw rather than become embroiled in a violent incident. They abandoned their attempt to arrest the deserter and tried to withdraw, but allegedly "the brave girl maintained her post [in front of the door], and it was only on a solemn promise being given by them to observe the laws and respect the soil of the United States in future, that the imprisoned [British] soldiers were released, and with their officer allowed to beat a hasty retreat." The borderland editorialists who publicized (and possibly embellished) such incidents emphasized local determination to defend sovereign rights and oppose illegal intrusions.<sup>72</sup>

However, more flexible and cooperative attitudes also survived to mid-century. In 1850, a U.S. officer in command of Fort Brady at the sparsely populated town of Sault St. Marie, Michigan, invited a neighboring officer in Upper Canada to come over and arrest half a dozen

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<sup>71</sup> Letter from St. Peters, 29 Aug 1847, reprinted in *Commercial Advertiser* (New York, NY) 9/13/1847, 2.

<sup>72</sup> *Westfield Republican*, (Westfield, NY), 2/25/1857, 1; reprinted in *The South-western*, (Shreveport, LA) 3/11/1857, 1; *Palmyra Weekly Whig*, (Palmyra, MO) 3/5/1857, 1; *Pittston Gazette* (Pittston, PA), 2/27/1857, 3.



deserters who had absconded from the British regiment. The British officer cautiously asked the American commander to give him written permission in advance to extract the deserters from American territory. The U.S. officer obliged and supplied him with a note of invitation. A group of officers and soldiers then came over from Canada, broke into the boarding house where the deserters were sleeping, and arrested them. They also purportedly threatened and assaulted the owners of the house and damaged their property. These householders complained to the federal government, which led to diplomatic discussion and investigation.

The U.S. officer who had authorized the cross-border arrest suggested that the status of the land and the consent of the community justified his actions. Since the territory on which the town stood was a Military Reserve, he believed he had the martial power to remove fugitives and vagrants in whatever manner he saw fit. He also claimed that local custom supported the informal arrest and exchange of deserters across the border. As proof, he collected affidavits from several respectable residents at Sault St. Marie who argued that their isolated circumstances gave them the right to protect their own communities. Situated "far away from the seat of civilization, having no strict system of police, or suitable place of retaining a culprit even when taken, we have no desire to entertain such persons, far less to render protection to such men as these deserters." The military commander at Fort Brady suggested that this attitude was a common one along that section of the frontier, and he listed a string of specific incidents in which private citizens and officials had captured deserters and delivered them from one country to the other. However, when he reported these cooperative customs to his commanding general, he received orders stating that whatever past practice had been, the Fort Brady commander should not pursue deserters into Canada in the future. Transnational cooperation in the arrest of deserters could still become customary in isolated, underdeveloped areas along the border long

into the nineteenth century, but it did not characterize the majority of recorded desertion incidents during this time period.<sup>73</sup>

### *Conclusion*

In the U.S.-Canadian borderlands, the public response to international deserters seeking protection was frequently supportive. However, attitudes either indifferent to deserters or favorable toward their arrest persisted throughout the period as well, with differing ideas about the proper exercise of sovereignty still evident at the end of this study's time period. Mid-century debate over whether invasive deserter arrests could be allowed under special circumstances arose in connection with the work of the International Boundary Commission. From the late 1850s to the early 1860s, both the American army in Washington Territory and the British army in British Columbia near the Pacific coast employed some of their soldiers to assist in surveying and clearing the land along the 49th parallel so as to make visible the line that officially divided their countries. Thanks to newly accurate surveys, it became clear that a previously established American fort at Semiahmoo was actually sitting on Canadian territory. When several U.S. soldiers from this fort deserted, their officer pursued them a short distance into the town of Langley in British Columbia and arrested them.

The resulting public coverage of the case illustrated continuing ambiguities in borderland attitudes about how best to assign meaning to their border while in the process of building it. Labeling the arrests an "outrage," newspapers in British Columbia protested the violation of their territory. However, one Canadian editorialist tried to draw a distinction between the flexibility required to build a borderline and the deterrence needed to maintain it afterward. "If the men

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<sup>73</sup> Manning, ed., *Diplomatic Correspondence of the United States*, vol 4, 368-375; *Commercial Advertiser* (New York, NY) 7/2/1850, 2.

arrested were deserters from the U.S. Boundary Survey," he observed, "we see no great harm in arresting them. In fact it would be difficult to imagine how the service [of surveying] could be carried by a corps of the regular service except the right [of arrest] to a reasonable extent was cordially conceded, in the case of deserters, to both nations." Given the public benefits that a clearly delineated border would provide, both countries had sufficient reason to support the work of the armies by temporarily relaxing, in the case of deserters, their principled defense of their sovereign jurisdictions. However, the local editorialist emphasized that beyond this single exception no foreign arrests could be allowed. "If on the other hand the men belonged merely to a frontier post," rather than to a boundary survey team, "it would assume another shape, -- and should receive a peremptory check. No treaty exists between our government and the United States which allows the latter to claim a deserter, let alone to violate our soil by sending a file of soldiers to arrest deserters or criminals."<sup>74</sup>

One of the U.S. deserters who had been arrested in Langley escaped from his confinement aboard an American ship while it sat docked at Canada's Vancouver Island several weeks later, provoking mixed public responses. Still in his manacles, the deserter lurched up the dock toward land, trying once again to claim protection. However, "he was seized by two American citizens" on the Canadian island who forced him back aboard the ship. A local Canadian paper noted that "Popular feeling naturally took the side of the prisoner, particularly as he claimed British protection, and asserted that he was an Englishman by birth." Public sympathy for this British-born deserter from the American army reportedly caused "considerable excitement," but the Canadian civil magistracy were initially inclined to look the other way. "No action, however, was taken by our authorities to liberate him," a local paper complained. In the

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<sup>74</sup> *The British Colonist* (Victoria, Vancouver Island) 2/4/1860, 2; *Albany Evening Journal* (Albany, NY) 3/9/1860, 2; *The British Colonist* quoted in the *New York Herald* (New York, NY) 3/12/1860, 2.

eyes of the Canadian editorialist, this inaction represented a lapse in both national pride and legal duty. "The fact existed that a man was arrested in broad daylight, in our streets, without the sanction of our laws, and yet no effort was made to vindicate our sovereignty. A disposition, on the contrary, was manifested to let the matter pass without notice."

The question of whether exceptions might be made to sovereign rights and whether fugitives from the army ought ever to be returned remained open to discussion. Eventually the U.S. deserter at Vancouver Island forced that discussion to continue when he escaped again and succeeded in winning a hearing in court. The presiding Canadian judge wished to accommodate the Americans by turning over the soldier. However, he felt such a measure would require executive rather than judicial action. "Justice Pemberton thought [t]he [deserter] ought to be given up; but said he had no authority to do so. It was necessary to apply to the Governor." The governor, and later the provincial Supreme Court, declined to return the soldier to his U.S. captors. Though they had been slow to intervene, civil and judicial authorities in British Columbia and Vancouver Island eventually exerted themselves to defend their border and the U.S. deserter who sought shelter behind it. Their reluctance to act, contrasted with the public's sympathy, reflected the ambiguous attitudes toward deserters and their international exchange that continued to co-exist in frontier communities.<sup>75</sup>

International desertion conflicts and negotiations were not everyday occurrences along the Canadian frontier, but the dozens of known incidents that appeared in newspapers, diplomatic correspondence, and army records between 1784 and 1860 offer the opportunity to observe the non-linear development of the border. They reveal the early strength that the dividing line accrued in the late-eighteenth century. Respect for sovereign territory was an

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<sup>75</sup> *The Daily Colonist* (Victoria, Vancouver Island) 6/16/1860, 2; *ibid.*, 6/21/1860, 3; *ibid.*, 6/23/1860, 2; *Victoria Gazette* article reprinted in *Commercial Advertiser* (New York, NY) 7/23/1860, 1.

important value that many civilian and military residents autonomously enforced. Despite their distance from metropolitan oversight, frontier inhabitants frequently understood and adopted the values of their higher governments. In the first decade of the nineteenth century, an influential Upper Canadian governor and military commander used his position to encourage new policies of discreet exchange that undermined the protection that the border had offered to deserters. The resulting informal agreements received tacit approval from some borderland officials and communities, but they also encountered repeated challenges. They tended to collapse under scrutiny and could be damaged by the publicity surrounding a violent arrest or even an internal review. International desertion case studies before the War of 1812 serve as reminders that the societies of the North American borderlands, though undoubtedly fluid and transnational in many respects, already incorporated a level of recognition for the sovereign divide between national territories that proved difficult to bridge.

After the War of 1812, widespread respect for the border's legal and practical significance encouraged renewed resistance to international raids and other forms of illegal desertion arrests, but some army officers and civilians continued forcing deserters back across the border. Clusters of international desertion conflicts marked the aftermath of the War of 1812 and also the troubled years surrounding the Canadian Rebellions from the late 1830s to the early 1840s. More sporadic incidents continued to occur up to 1860 and beyond. Recognition of national territorial rights increasingly pushed deserter pursuits into liminal spaces, most commonly waterways. Foreign incursions after deserters called on borderland commentators to express their regional perspectives on international conflicts. Many writers called on their higher governments to protect the border through the proper diplomatic channels. Some borderland

communities feared what would happen if they were left to their own devices and vigilante action broke out among members of their own communities.

Desertion conflicts of the antebellum era did not fit smoothly into regularizing or orderly patterns of informal borderland extradition. Instead, they showed that borderland communities did not respond to all fugitives in the same way. Community customs left room for those inclined to turn a blind eye to cross-border arrests. They also allowed for others who defended deserters through public print or mob action. A controversial crime that continued to provoke varied responses, international desertion contributed to the irregular growth of a strong, but never impregnable, border.

That border benefitted not only successful deserters, but also those who did not ultimately escape and had to stand as prisoners before courts martial. The following chapter will investigate what happened to deserters in the Canadian borderlands after they surrendered or suffered arrest. Deserters navigated military law and manipulated the border in order to ameliorate their punishments. Rather than purely passive victims of military tribunals, deserters were often active and creative participants in their own defense who used the international divide not only to escape from their military duties, but also to return to the army on their own terms.

## Chapter Five

### Court Martialed on the Northern Frontier: Rewards, Returns, and Respectability

In July 1819, Mr. Sherbael Lincoln and his son woke with a start when a soldier, Private Thomas Baker, came to their house at dawn and begged them to arrest him as a deserter. They lived about five miles from the American military post at Sackets Harbor, New York, off the eastern shore of Lake Ontario, but Baker urged them to pretend that they had pursued him to more than twice that distance from the fort. He wanted to make it seem that he had been trying to get away from his regiment, when in truth he had simply spent the last few days out on “a drunken frolic.” He was afraid to return to his post because his superior officer was in the habit of punishing minor infractions extra-judicially by doling out summary floggings, which were at that time prohibited by military law.

Baker felt that his best hope was to exaggerate his crime from absence without leave into desertion; this more serious charge would have to be tried by a general court martial, and he believed that the formality of those proceedings would protect him from illegal forms of corporal punishment. He “had concluded to get some one to come in with him, to make it appear that, he had deserted – in order that he might be tried by a Court Martial – preferring paying the reward of thirty dollars and being punished as a deserter – to being flogged.” The Lincolns agreed to this scheme and accepted the reward money, but at his trial they testified to the deception. Baker also stated in his defense that he “had been flogged by Lieut. Johnson, three hundred and eighteen lashes, which had had [sic] induced him to commit the crime he had done.” Despite the evidence of Baker’s ploy that emerged during the trial, the court accepted the charge that he had manufactured and found him guilty of desertion.

The military tribunal sentenced Baker to four months of solitary confinement and an additional two months of hard labor with a ball and chain attached to his leg, but he succeeded in the goal he set for himself: he was not flogged. Furthermore, his testimony made the abuse of his lieutenant a matter of record. The proceedings of all general courts martial were transcribed and mailed to army headquarters to be reviewed by the commanding general. By orchestrating his own manner of return and manipulating the military legal system, he ameliorated – though he did not escape – his punishment, while the court’s records carried his complaints to higher authorities who would normally have been beyond his reach.<sup>1</sup>

Baker’s case illustrates certain ways that general courts martial might provide protection to soldiers who were afraid of extra-judicial punishment, but there were some in the rank and file who, facing more lenient officers, bargained instead to keep their cases from ever coming to trial. In 1799 Captain Philip Church, aide-de-camp and nephew of former U.S. Treasury Secretary Alexander Hamilton, wrote to his uncle in dismay after a conversation he held with a pair of soldiers lately stationed on the Niagara frontier. He was “astonished to find how lightly they talked of desertion assuring me that it was very common, but that the deserters when recovered were never punished.” Twenty years later a major at Sacket’s Harbor sent one of his subordinate officers to collect a deserter who had surrendered himself at a neighboring fort, at the same time “stating his intention of allowing him to return to duty, without trial, as he had deserted through fear of punishment, for a crime he had been drawn into,” and was therefore a fit object for

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<sup>1</sup> National Archives Records Administration, Washington D.C. [hereafter NARA DC], RG 153, Box 35, file S30, Sackets Harbor, NY, July 26, 1819, Pvt Thomas Baker. The Lincolns may have revealed the truth about Baker’s fake desertion ploy during his court martial because they were unwilling to lie under oath, but it is also possible that they were trying to help Baker. Once his formal trial began, he had already achieved his primary objective of avoiding summary punishment. If, once in session, the court could be convinced to lower his charge back down to AWOL, the end result would have been a lighter sentence for him. In this case, there is no evidence that the commanding general caused any investigation to be made into Baker’s complaint regarding his lieutenant’s abuse. However, similar allegations of abuse from enlisted men against their officers did occasionally prompt investigation.



informal leniency. In Canada, British Private Joseph Shirt deserted from Toronto but surrendered himself near Niagara a few days later. His commanding officer pardoned him without going through the trouble of submitting him to any legal process or trial. Such cases make it clear that soldiers who managed to stay outside the legal framework sometimes succeeded in escaping punishment altogether.<sup>2</sup>

Accused deserters negotiated for amelioration through courts martial and outside of them, and for that reason it is challenging to assemble a clear picture of their efforts, successes, and failures. For some soldiers, like Thomas Baker, obtaining a trial by general court martial was in itself a form of amelioration so long as the court issued sentences that, while hardly lenient, were limited by law and subject to higher review. Harsher, unsupervised punishments awaited many soldiers outside of court. On the other hand, those soldiers who believed they would be better off avoiding trial and negotiated their way to extra-judicial leniency have generally not left records of such successes behind. This chapter will present both quantitative and qualitative analysis of general courts martial records in order to examine the defense strategies of accused deserters, which have been largely overlooked in the scholarship of martial crime and punishment. However, any statistics about desertion courts martial can be misleading if we do not first acknowledge that much negotiation, both successful and unsuccessful, went unrecorded and that the records that do exist may have ameliorative subtexts that we cannot quantify with any certainty.<sup>3</sup>

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<sup>2</sup> “To Alexander Hamilton from Philip Church, 12 June, 1799,” Founders Online, National Archives (<http://founders.archives.gov/documents/Hamilton/01-23-02-0175> [last update: 2015-03-20]). Source: *The Papers of Alexander Hamilton*, vol. 23, *April 1799-October 1799*, ed. Harold C. Syrett. New York: Columbia University Press, 1976, p. 181; NARA DC, RG 153, Box 35, S30, Sackets Harbor, NY, July 26, 1819, Private Truman Avery; British National Archives, Kew, WO 71/292, 29 Aug 1835, Kingston, Upper Canada, Pvt. Joseph Shirt.

<sup>3</sup> On extrajudicial punishments, see Mark A. Vargas, “The Military Justice System and the Use of Illegal Punishments as Causes of Desertion in the U.S. Army, 1821-1835.” *The Journal of Military History*, vol. 55, no. 1 (January 1991), 1-19. For a thorough, concise overview of the evolution of U.S. military justice during this time period with special attention to officer-enlisted men conflicts, see William Skelton, *An American Profession of*

While acknowledging the ambiguities inherent in the project, this chapter seeks to better understand the arguments soldiers made in court. It analyzes the defense statements on record by situating them within the larger context of economic incentives, legal traditions, orchestrated gestures of surrender, and cultural expectations that shaped the way that accused deserters came to trial and the punishments they were accorded. It also seeks to refocus scholarly attention on the soldier defendants themselves and on the patterns of argument and action they took to appeal for amelioration, many of which reflected their understandings of martial law and of broader cultural claims of class and character. Too often in the existing scholarship, courts martial have been studied only in terms of their final sentences, and evaluating the military justice system in those terms has concentrated attention on the officer judges while overlooking the soldiers in the dock, whose efforts were neither unsophisticated nor ineffectual.<sup>4</sup>

Furthermore, desertion statistics as reported in the U.S. and British North American armies' monthly returns, and tabulated in Congressional and Parliamentary reports, have not taken account of the different ways that deserters returned to their duty. Some soldiers surrendered themselves, others were caught by pursuit parties of their fellow soldiers, and others were arrested by civilians. Yet on the monthly forms there was only one column in which officers listed the total number who had "Joined from desertion." This kind of undifferentiated

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*Arms: The Army Officer Corps, 1784-1861*. (Lawrence: University Press of Kansas, 1992), 260-281. See also Edward M. Coffman, *The Old Army: A Portrait of the American Army in Peacetime, 1784-1898*. (New York: Oxford University Press, 1986), 192-200. For other studies offering quantitative and qualitative courts martial analysis, see Stephen J. Ramold, *Baring the Iron Hand: Discipline in the Union Army*. (Northern Illinois University Press, 2010) 219-263, 302-343; J.C.A. Stagg, "Freedom and Subordination: Disciplinary Problems in the U.S. Army during the War of 1812." *The Journal of Military History*, vol. 78, issue 2 (April 2014), 537-574; Arthur N. Gilbert, "Why Men Deserted from the Eighteenth-Century British Army." *Armed Forces & Society* (Summer 1980) vol. 6, no. 4, 553-567.

<sup>4</sup> The exceptions are Gilbert, "Why Men Deserted," and Stagg, "Freedom and Subordination." These articles quantify the types of arguments soldiers used in their defense statements during the Seven Years War and the War of 1812, respectively. Both authors read the defense statements straightforwardly for evidence of soldiers' motivations to desert.

counting obscured the calculated return strategies of deserters themselves, overlooking important differences between desertions that ended voluntarily versus involuntarily. The aggregated numbers also offered no opportunity to estimate the extent of civilian involvement in policing errant soldiers.<sup>5</sup>

In delineating the defensive strategies of accused borderland deserters who faced courts martial, this chapter shows that many enlisted men were active and ingenious participants in the military justice system. Although there were many soldiers who did not make any defense for themselves, presumably because they did not think anything they could say would influence their judges, there were nevertheless many others who mounted defenses ranging in style from basic to highly elaborate. A soldier might try to ameliorate his sentence by proving he had surrendered himself, or by casting suspicion on the mercenary motives of the soldier or civilian who had arrested him. He might also craft his defense statement to highlight qualities of his character that proved him too respectable to merit corporal punishment. On the U.S.-Canadian frontier, accused deserters made literal and rhetorical use of the international border to aid in establishing their intentions, which was the key legal issue that a court would use to decide between the charges of desertion and absence without leave. Interpreting accused soldiers' arguments in the context of the legal issues, economic incentives, and social values that affected them enriches our understanding of their words and actions in their own defense, and it also clarifies our picture of civil-military relations on the frontier.

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<sup>5</sup> Ancestry.com has digitized NARA's collection of "U.S., Returns from Military Posts, 1806-1916." The originals are filed as *Returns From U.S. Military Posts, 1800-1916*; (National Archives Microfilm Publication M617, 1,550 rolls); Records of the Adjutant General's Office, 1780's-1917, Record Group 94; National Archives, Washington, D.C.

*A brief overview of general court martial statistics*

A brief quantitative overview of a selection of general courts martial desertion cases will illustrate the various ways that U.S. and British deserters returned to their armies, and also establish a baseline estimate of the extent of amelioration in official martial punishments. These figures are not intended as comprehensive representations, since there are irregular chronological gaps between extant records, some due to the sporadic manning of frontier posts and others due to lost records. I have used all surviving manuscripts. General courts martial proceedings are the only records that transcribed trials in enough detail to gather significant data on soldiers' methods of return. They also illuminate civil-military relations in frontier communities by revealing civilians' level of participation in desertion arrests.

The parameters and sources of my statistics are as follows. The analysis draws on all extant general court martial desertion case files for British North America from 1784 to 1850, excluding the War of 1812 (360 cases). These records originated across the Canadian provinces, including Upper Canada, Lower Canada, the Maritimes, and Newfoundland. The analysis also assembles data from all extant general court martial desertion records for three significant U.S. posts on the northern border, namely Detroit, Niagara, and Plattsburgh (571 cases). U.S. peacetime general courts martial records have only survived for the period after the War of 1812, and most American northern borderland posts were being abandoned by the early 1850s. For these reasons, the courts martial cases cited below begin during the post-war months of 1815 and run out by 1852. The first two U.S. posts, Detroit and Niagara, were recurrent and significant desertion sites across the time period, while the third post, Plattsburgh, adds representation of the section of the U.S. border shared with Lower Canada (Quebec).<sup>6</sup> [See Tables 5.1 – 5.3]

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<sup>6</sup> After 1850 no further trial transcripts are available in the British Canadian records.

**Table 5.1: Methods of Return in Individual Desertion Court Martial Cases from Selected U.S. Border Posts, 1815-1852**

	<b>Detroit</b>	<b>Niagara</b>	<b>Plattsburgh</b>	<b>Totals</b>
<b>Apprehended by Soldier(s)</b>	79	49	16	144 (25.2%)
<b>Apprehended by Citizen(s)</b>	40	17	28	85 (14.8%)
<b>Apprehended by both soldiers and citizens</b>	13	1	1	15 (2.6%)
<b>Self-surrender</b>	49	36	23	108 (18.9%)
<b>Unspecified apprehension/ Unknown/Other</b>	93	49	77	219 (38.4%)

Sources: RG 153, Records of the Judge Advocate General (Army), Court Martial Case Files (1809-1894), Boxes 1-202. NARA, D.C.

**Table 5.2: Methods of Return in Individual Desertion Court Martial Cases from British North America, 1784-1850**

	<b>Before War of 1812</b>	<b>After War of 1812</b>	<b>Totals</b>
<b>Apprehended by Soldier(s)</b>	45 (46.4%)	138 (52.5%)	183 (50.8%)
<b>Apprehended by Civilian(s)</b>	19 (19.5%)	66 (25%)	85 (23.6)
<b>Apprehended by both soldiers and civilians</b>	10 (10.3%)	32 (12.2%)	42 (11.7%)
<b>Self-surrender</b>	6 (6.2%)	19 (7.2%)	25 (6.9%)
<b>Unspecified apprehension/ Unknown/Other</b>	17 (17.5%)	8 (3%)	25 (6.9%)

Sources: WO 71/156 to WO 71/340, The National Archives, Kew, England.

**Table 5.3: Levels of Documented Remission in Desertion Courts Martial Sentences from Selected U.S. Posts (1815-1852) and British North America (1784-1850)**

	<b>Sentence Reduced</b>	<b>Sentence Not Reduced</b>	<b>Unknown</b>
<b>Canadian Cases (Before War of 1812)</b>	33 (34%)	63 (65%)	1 (1%)
<b>Canadian Cases (After War of 1812)</b>	28 (10.6%)	231 (87.8%)	4 (1.5%)
<b>Cases from Detroit, Niagara &amp; Plattsburgh</b>	182 (31.9%)	386 (67.6%)	3 (0.5%)

Sources: WO 71/156 to WO 71/340, The National Archives, Kew, England; RG 153, Records of the Judge Advocate General (Army), Court Martial Case Files (1809-1894), Boxes 1-202, NARA, D.C.

Trends in the statistics clarify the role that borderland civilians played in helping to recover errant soldiers, showing that frontier armies could not handle their internal discipline alone but relied on their neighboring populations. Often described as ‘frontier constabularies,’ borderland armies nonetheless used local civilians as constabularies in their turn, calling on them to track, arrest, and deliver missing soldiers. A comparison of Tables 5.1 and 5.2 suggests that the residents of British North America and the United States developed different civil-military patterns of policing their armies. Roughly 35% of Canadian desertion cases involved civilians (defined as inhabitants, magistrates, constables, militiamen, or volunteers) either independently conducting arrests or participating alongside soldiers in making arrests. Deserters’ methods of return in U.S. desertion cases are less clear because in many trials key factors remained unspecified. Some of these cases mention apprehension but do not indicate anything about whether soldiers or civilians were making the arrests, while other trial records vaguely mention a soldier’s return to the army but do not clarify whether his case was one of capture or surrender. The British consistently differentiated civilian and military arrests, as well as surrenders, in their desertion trial records. However, in American courts martial, if a prisoner pled guilty the tribunal frequently did not take testimony or establish important details about the soldier’s method of return to the army.

Relying on imperfect trial records, a fragmented picture of policing strategies on the American side of the border begins to emerge. American citizens near the northern border, acting largely on their own but occasionally in concert with soldiers, took part in at least 17% of desertion arrests. However, American citizens must also have conducted some portion of apprehensions in the large ‘unspecified apprehension/unknown return’ category, so their true

levels of participation in army police actions were higher. Likewise, many unspecified apprehensions were probably conducted by U.S. soldiers, in which case their current 25.2% participation rate is a significant underestimate. However, despite the uncertainties that obscure the details of apprehension in 38.4% of U.S. desertion trials, the apparent pattern of more active civil-military cooperation in deserter arrests on the Canadian side of the border is probably accurate. British subjects and British regular soldiers worked together in the same desertion arrests in almost 12% of cases. That figure hovered near 2½% on the U.S. side, indicating less effective liaising between civil and military groups.

U.S. deserters appear to have placed more faith in self-surrender strategies than did British army fugitives, reflecting their different attitudes toward their respective courts. Surrendering themselves in 19% of cases, nearly 1/5 of American deserters believed there was a chance that they could win leniency through this single demonstrative gesture. Many of the standard factors that might sway court martial members into recommending a full pardon or partial remission of punishment – a soldier's youth or his short time in service, his weak state of health, or officers' testimony as to his previous good character – constituted pre-existing factors that a soldier in a state of desertion could do little to change. But surrender offered soldiers a means to try to win mercy through their own immediate action. The low rate of recorded Canadian surrenders (7%) may indicate a lack of faith among British soldiers in the responsiveness and flexibility of their tribunals, which were likely to ignore the gesture. Alternatively, it may indicate that British soldiers who surrendered were only rarely brought to trial at the general court martial level. Increasingly after the War of 1812, Canadians reserved general courts martial for their most hardened offenders. This highest-level court was authorized to deal out much more severe punishments than lower-level regimental, district, or garrison

courts. Often the men funneled into these harshest tribunals were those considered irretrievable troublemakers deserving of transportation to the empire's penal colonies.

The growing contrast in remission rates between Canadian and U.S. general courts martial sentences over the first half of the nineteenth century confirms these trends. For the purpose of this analysis, a sentence has only been credited as reduced if there is an explicit acknowledgement on paper that the court deliberately recommended mercy or that the commanding generals, kings, or presidents who were consulted for review granted some degree of official reprieve. This establishes a minimal, provable baseline estimate of amelioration. In U.S. cases this baseline remained relatively high, near 32%, a figure quite comparable to the pre-1812 clemency rate of 34% in Canadian cases. In the post-war decades, however, the Canadian remission rate plunged to only a little over 10% as their courts became uncompromising clearinghouses largely devoted to exiling recidivist offenders.

On top of these definite figures, there are many more debatable cases in which the courts awarded sentences of differing severities to men convicted of the same charge, some of whom had literally been partners in the same act of desertion. In these cases the calibration of courts' sentencing sometimes seemed to follow a clearly discernable, though unspoken, logic influenced by factors such as character references, previous convictions, self-surrender, or other mitigating circumstances, while in other instances a court's sentencing disparities seemed inexplicable. Both nineteenth-century contemporaries and modern military historians have characterized courts martial sentencing as highly irregular and the extent to which deviations in punishments were arbitrary or biased is difficult to prove. For the sake of quantitative reliability, the cases in which a sitting court, without written explanation, issued a particular soldier a lower sentence than some of his fellow offenders – for example, Canadian courts that assigned one deserter a



sentence of 14 years transportation while another who deserted at the same time received a 21 year sentence, or American courts that condemned one deserter to 50 lashes while his companion received only 25 – have not been counted as official sentence reductions. They are not captured in the statistics compiled above. Nevertheless, such disparities were of frequent occurrence, and a soldier's defense arguments could make an impact on this area of sentencing.

The broad patterns established in these cases show that over 1/3 of American deserters on the northern frontier came back to their regiments either in the hands of civilians or under their own power. In Canada, over 40% of deserter returns involved either surrenders or civilians taking part in their arrests. Civilian policing and soldiers' deliberate self-surrender therefore constitute important understudied factors in the borderland desertion experience. The significant remission rates of military tribunals' sentences – over 30% in America and in pre-1812 Canada – help explain why defendants, aware they would likely be found guilty, nonetheless made efforts to present ameliorating evidence to their officer judges. Acquittal was not the only marker of success for deserters seeking to improve their situations. The following sections will more closely examine the way these factors shaped the defense strategies that accused deserters brought to bear when they faced trial and punishment along the British North American border.

### *The Evolution of the Reward System*

The American federal government – following the tradition of earlier colonial, state, and imperial governments – offered monetary rewards to those who captured and returned deserting soldiers, but in its early years the administration of this rewards system was confused. During the 1790s, William Simmons handled reward claims at the federal Accountant's Office, and at times he seemed to express contradictory opinions as to whether soldiers could claim the \$10

bounty for captured deserters. In 1796 he explained that soldiers could receive the reward, but could not be further reimbursed for any expenses they had incurred in their pursuit of deserters. He then decided that soldiers could in fact have their reasonable expenses paid, but in that case they could not also receive the bounty. In some cases, he simply subtracted ten dollars from the soldier's expense receipts, expecting that the same amount would be taken from the salary of the captured deserter and given to the man who caught him on pay days at the fort where they served. Simmons communicated his policy in contradictory ways. To one officer he stated that "an Officer or Soldier is never allowed the [\$10] Premium. His Expences if he has accrued any extra, are generally allowed." While to another he explained that "The [\$10] reward for apprehending a deserter has generally been paid to soldiers where it has been thought that they were deserving of it but that is to include all expenses attending it."

Confusion in policy led to confusion in claims. Some officers thought they could claim expenses, others applied for the reward. Some were skeptical that they would actually be able to obtain any money from the government, and others were simply unaware of what rules governed the reward policy. Regarding civilian claims, Simmons pointed to the regulations in the Articles of War that required officers to advertise for their deserters if they were not successful in their initial pursuit. Simmons maintained that after an advertisement had been placed, anyone – soldier or civilian – who returned the errant soldiers could then receive the full reward. But Simmons stated that without a copy of such an advertisement as proof that the reward had been promised, he could not disburse the bounty. His policy aimed to guarantee that the monetary reward was not handed out too freely, but was more often reserved for those cases where the first efforts of the army had failed and an appeal to the public had proved necessary.<sup>7</sup>

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<sup>7</sup> All of the following correspondence is available online through: Papers of the War Department, 1784 to 1800, wardepartmentpapers.org. William Simmons to Edward Carrington, November 28, 1796, taken from NARA:

In addition to honoring the strict letter of the army regulations, this policy was in practice a cost-cutting measure that, intentionally or not, anticipated and offset a potential abuse in the rewards system. Attaching bounties to the capture of deserters created an incentive to inflate the charges against truant soldiers. It was not at all uncommon for a soldier to overstay the hour specified on his pass, to go on a drunken spree that lasted several days, to take or extend his leave without permission, or to transfer himself from one post to another, and yet to have no intention of permanently abandoning the service. Many such soldiers could have been charged with absence without leave rather than with desertion. However, no reward was offered for returning an absentee soldier, because the defining characteristic of an absentee was that he intended to return himself. The prospect of money encouraged soldiers and civilians to arrest any soldier in their vicinity who was away from his post without permission and turn him in as a deserter, despite the probability that some soldiers thus arrested would likely have returned on their own. In both Canada and the United States, citizens and soldiers were not shy about stopping travelers on the road or on the wharves of ferries and steamboats, especially those who showed signs of army service in their clothes, posture, or haircuts. If a man so challenged could not produce a written pass to be temporarily absent or a certificate of honorable discharge, he was in danger of being arrested on suspicion of desertion. Up to the turn of the nineteenth century in the United States, however, the confusion surrounding when and if soldiers could claim rewards and the limit on civilian rewards, requiring them to wait until a deserter had been absent long enough to be advertised, reduced the incentive for premature desertion arrests.

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Letterbook, War Dept Accountant, RG217; William Simmons to William R. Boote, August 18, 1798, taken from Rutgers, the State University of New Jersey: William Rowland Boote Papers; see also Simmons to Alexander Gibson, 1796; Simmons to Isaac Craig, Nov 25, 1797; Simmons to Stephen Rochefontaine, March 4, 1797; Simmons to Nehemiah Freeman March 4, 1797; Simmons to Staats Morris, Oct 20 1797.

Simmons's interpretation of the bounty policy for desertion came under fire in 1799 in the midst of the United States's quasi-war with France and the temporary flurry of military re-organization spearheaded by Alexander Hamilton. Hamilton's economic pragmatism was directed toward different priorities, and he urged his friend John McHenry, the Secretary of War, to consider whether the existing regulations might not be interpreted with greater latitude in order to allow soldiers to collect rewards for catching deserters at any time. He felt that soldiers would be inspired to greater effectiveness in their initial pursuit of deserters if they could rely on receiving full rewards. This would reduce government spending on advertising deserters, and new recruits would also be more successfully deterred from desertion. Debate over this question – also inspired by the furious complaints of a citizen who had been denied his ten dollars in part because he could not produce an advertisement – led to consternation between the War Office and the Accountant's Office. Simmons eventually suggested that perhaps the wisest course would be to consider making exceptions to his frugal policy on a case-by-case basis. However, the issue was never finally resolved, as the disbandment of Hamilton's army and the resignation of McHenry as Secretary of War soon put an end to further discussion.<sup>8</sup>

Confusion over reimbursement policies and the general unreliability of army pay and allowances provided continuing incentives for officers to handle some desertion cases at the regimental level, or extra-judicially. Some officers kept cases out of court because they preferred to summarily and harshly punish insubordinate soldiers, but there could also be more

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<sup>8</sup> "From Alexander Hamilton to James McHenry, 30 September 1799," Founders Online, National Archives (<http://founders.archives.gov/documents/Hamilton/01-23-02-0444> [last update: 2015-03-20]). Source: *The Papers of Alexander Hamilton*, vol. 23, *April 1799–October 1799*, ed. Harold C. Syrett. New York: Columbia University Press, 1976, pp. 485–487; Papers of the War Department, Hugh McAlister to President John Adams, August 24, 1799, taken from Massachusetts Historical Society: John Adams Papers; James McHenry to William Simmons, October 14, 1799; William Simmons to James McHenry, October 16, 1799; James McHenry to William Simmons, October 17, 1799; William Simmons to James McHenry, October 21, 1799; William Simmons to John Adams, October 21, 1799; James McHenry to John Adams, October 25, 1799.

prosaic considerations at work. Courts martial could be expensive – particularly general courts martial – because they mandated from five to thirteen officers to be present on the tribunal. American officers frequently and unashamedly fudged on this regulation, usually aiming for the minimal number of court members and claiming no more could be gathered without “manifest injury to the service.” By contrast, British Canadian general courts martial always consisted of the full thirteen required officers. In both Canada and the U.S., assembling a general court martial frequently obliged the officers from one frontier post to travel to another, incurring expenses that were not promptly repaid and leaving the officer roster at their regular posts undermanned. There were also expenses attached to the pursuit of deserters, such as hiring a horse to make a rapid chase, or the cost of food and lodging if the search was to last several days.

Such fiscal concerns could put a damper on deserter pursuits. In the United States, Secretary of War McHenry was alarmed in 1800 to receive a forwarded letter showing that officers were neglecting the pursuit of deserters for fear of personal debt.

Lieut. Bentley who was last week sent in pursuit of the three Deserters reported, that after a tour fatiguing & expensive, he return'd with one of them. This evening he heard of the other two...I would have sent him in pursuit of them, if I had not thought the expense too oppressive for a Subaltern's pay. This is certainly a necessary expenditure, but I have seen no regular provision made for the repayment; and an Officer had better give it up, than attempt to hunt it through the different Offices of the Money Department.

In Canada, commanders were relieved when the revised Mutiny Act of 1803 clarified that “The right of the Military, to apprehend Deserters, and to receive the Reward for apprehending them, without the assistance of a Civil Officer, is now established.” This Act also added a clause requiring gaol-keepers to confine deserters as prisoners overnight without charging a fee, which

made it less expensive for British officers and privates in Canada to try to march a deserter back to barracks after pursuing him a significant distance.<sup>9</sup>

An officer out on recruiting duty might prefer to deal with deserters quickly rather than march them around in chains until a general court martial could be convened, as such a spectacle could dampen any enthusiasm for enlistments. Altering the charge to absence without leave made it possible to legally try a soldier at the regimental level, which required only three officers and could generally be handled expeditiously. In 1801 U.S. officer Jacob Kingsbury, while on recruiting service in Pennsylvania, wrote to his fellow officer Daniel Bissell about just such a dilemma. He mentioned that “I have advertised Peet, and to my supprise had him deliverd to me this day and have been obliged to pay ten dollars Premium and three dollars for expences...it is not out of our power yet to try him for being Absent Without Leave and give him a Whiping & Make Stoppages out of his pay sufficient to reimburse the thirteen dollars.” Bissell approved of the idea of recording him as an absentee rather than as a deserter in the official army records. “I agree perfectly with you that it is much better to put a Crime against him for absence without leave, and have him tried for the same than to be troubled with him in irons on a long & tedious March. The trouble of a Man in that situation is not All for it dissifects the people through the Country which we travel, and militates much against the Soldery.” This officer felt that visibly displaying prisoners awaiting court martial and corporal punishment would reinforce public prejudices against the army with its tyrannical reputation, “for god knows we appear contemptible enough through that Democratic’d State of Pensylvania.”<sup>10</sup>

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<sup>9</sup> Papers of the War Department, Extract from letter of Lieutenant Hall to Colonel Pinckney, quoted in James McHenry to William Simmons, January 10, 1800; LAC, RG 8, C-3045, frames 570-571, vol 513, 29-30.

<sup>10</sup> New York Historical Society, Jacob Kingsbury papers, MSS of Jacob Kingsbury (1756-1837) and of Kingsbury Family, Major Kingsbury Letter Book Commencing April 4, 1799, Jacob Kingsbury to Daniel Bissell, letter no. 7, April 14, 1801; on reverse side, Copies of Letters Received Since April 1, 1801, Daniel Bissell to Jacob Kingsbury, letter no. 13, April 17, 1801. For an historical overview of the organization and characteristics of the different levels

In the following decades of the nineteenth century more accessible reward practices developed, enabling soldiers as well as civilians to receive the prescribed premiums; however, once deserters were turned in, the types of trial they faced diverged on different sides of the international border. In the U.S. after the War of 1812, bounties rose to \$15 and then to \$30 per deserter. In Canada, the standard reward to soldiers and civilians was reported, in 1833, as four pounds sterling, six shillings, eight pence, equivalent at that time to about \$20. Anyone who performed an arrest could claim these rewards as a matter of course and did not have to wait for a desertion to be advertised in order to receive the price for a soldier's arrest. Usually they did not have to wait for the soldier they'd arrested to be tried and convicted, either, but received payment certificates immediately upon delivery of a missing soldier to one of the army posts. It seems to have been rare for an officer to refuse to issue such a certificate. In the United States, cases that might otherwise have been classed as unauthorized absences and dealt with extra-judicially or at the regimental level were instead recorded as desertions and funneled into general courts martial. In Canada, many desertion cases were still heard in lower-level courts that were technically unauthorized to try them, though many officers ignored this restriction. In 1844 Queen Victoria bowed to the frontier army's established practices and authorized inferior courts in Canada to hear desertion cases. In both Canada and the U.S., the decision to label a soldier as an absentee or a deserter often depended on pragmatic considerations about reward payments and court jurisdictions.<sup>11</sup>

This is not to say that most army deserters were really only absentees. The high rates of genuine desertion in the borderland peacetime armies are incontrovertible, not least because the

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of U.S. courts martial and the judge advocate general's office, see George James Stansfield, "A History of the Judge Advocate General's Department United States Army," *Military Affairs*, vol. 9, no. 3 (Autumn, 1945), 219-237.

<sup>11</sup> LAC, RG 8, C-2775, frames 255-257, vol 171, 68-70; *ibid*, frame 289, vol 171, 98; *ibid*, C-3063, frame 459-60, vol 520, 65-66.

majority of those who deserted never returned. However, court martial records exclude this majority of successful deserters and narrow the field to the minority who returned to the army either through arrest or through surrender. Regarding arrests, the easiest soldiers to catch were those who were not actually trying to permanently depart, and the number of captured ‘deserters’ in existing court martial records should be understood as inflated and reflecting to some degree the financial incentives to trump up the charge that an increasingly accessible reward system created. On the other hand, the defense claims of accused soldiers were shaped by their countervailing personal incentive to pretend to absence even when they had genuinely attempted desertion. Defendants tried to make claims that would seem plausible given the wider context that the reward system had put into place. When called upon to defend themselves, accused deserters utilized a variety of strategies that played upon the tensions between absence and desertion, while also making appeals based on their previous good character, length of service, age, and health. U.S. deserter defendants would make use of the international border to help prove the voluntary nature of their return, while British soldiers more frequently made rhetorical use of their proximity to the United States to argue that they had faithfully declined many better opportunities to desert.

#### *Amelioration Strategies: Establishing Intent and Orchestrating Returns*

In both British and American military law, the definitions of absence without leave and desertion hinged on the question of intent. As a British military commentator noted when comparing these two crimes in 1785, “[t]he act and deed is the same, but the intentions that accompany it, which must be judged of from circumstances, are what constitute the crime, and not the length of time that he is absent or the distance to which he escapes.” In the U.S., even



soldiers who were gone for long periods of time and who traveled great distances could sometimes convince court martial boards to transmute their sentences to absence without leave if they could give evidence that they had always intended to return. On the other hand, soldiers who had been gone for a short time – a few days, or even mere hours – were routinely found guilty of desertion if they had been arrested and turned in for the reward, but conviction was particularly likely if they gave signs of having planned a permanent departure.<sup>12</sup>

Courts martial boards looked for evidence of intent. Officers interrogated witnesses about soldiers' clothing and their travel. Had they disguised themselves by putting on civilian clothes, or bundled together their belongings to take with them, or headed for the international border without permission? If a soldier hoped to lessen his charge from desertion to absence without leave, then he needed to convince the officers at his tribunal that he had never made a clear decision to leave the army. The language of deserters' courts martial make it clear that this was widely understood among enlisted men. Even soldiers who made no other defense would often say at least that they had "no intention" to desert. This amelioration strategy was attempted far more often than it succeeded. In the U.S. only about 5.5% of the courts martial cases in Detroit, Niagara, and Plattsburgh ultimately converted desertion charges to AWOLs, and in Canada it happened only once. Nevertheless, many soldiers tried to pursue this line of argument, and the occasional successful cases illustrated that military law could, under the right conditions, turn flexible.

In cases involving short-term absence – a few hours or days – accused deserters commonly addressed the question of intent by claiming that they had been staggeringly drunk.

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<sup>12</sup> Stephen Payne Adye. *A treatise on courts martial. To which is added, an essay on military punishments and rewards. The third edition, with additions and amendments* (London: Printed for J. Murray, 1785), 208. Adye served in British North America as an officer in the British Royal Artillery and as a deputy judge advocate.

In many cases such a claim was likely true, but it is worth noting that deserter defendants portrayed most drunkenness as blackout drunkenness that eliminated their reason or memory. In such a state they could not have made any serious plans to desert because they were not in their right minds. U.S. Private Peter Whieldon built up a powerful defense in this vein during his 1830 trial for desertion. Whieldon was posted to Hancock Barracks in Houlton, Maine, which was within easy walking distance of New Brunswick. Despite the fact that he had been absent from his post for only a few hours, the case against him looked serious. He had crossed the line into Canada without permission, and when a sergeant from his company found him and tried to conduct him peacefully back to the American garrison, Whieldon tried to take his musket from him in a drunken scuffle and, when the sergeant called on a civilian bystander for help, Whieldon refused to go with them and sat on the ground. Eventually, however, they coaxed him into standing and together they brought him back to the barracks without any further resistance on his part. Both the court martial members and Whieldon himself cross-examined witnesses, and they established that Whieldon had been lingering around the garrison getting drunk for most of the day, that when he left for Canada he had not taken his knapsack (containing his clothes and personal belongings) with him, and that he had announced on leaving that he was going out for liquor. Whieldon concluded his defense with a powerful written address to the court in which he reviewed all the circumstances that made it seem unlikely that he had been planning a permanent break with the army. He insisted that his “whole course of conduct indicates a deranged mind – such was my situation, and such the situation to which liquor invariably reduces me.” The court agreed, and found him not guilty of desertion, but guilty of absence without leave. Rather than spending the rest of his enlistment confined at hard labor, as he would have done if convicted of desertion, Whieldon was given a two month sentence instead. Although he was not acquitted,

his defense was considerably successful nonetheless.<sup>13</sup>

The court martial board trying U.S. Private Henry Hall's desertion case in 1842 ultimately shifted his sentence to absence without leave as well, despite his longer absence and lengthier travel away from his garrison. Hall deserted his post at Buffalo Barracks and travelled for three days, covering almost forty miles to Niagara. There he turned himself in and requested to join his old company. He had been unhappy at Buffalo and uncomfortable with his assignment to train with the band there, saying "he could not stay...he was not fit for a musician and wanted to join his company." He had transferred himself without permission from one post to another. This transfer was not retroactively authorized, and he was returned to Buffalo, but the court reduced his charge to absence without leave because they accepted that his motivation in leaving one post had been to surrender himself at another. His course had entailed considerable risk, however, because if any enterprising citizen or soldier had apprehended him on suspicion of being a deserter while he was travelling between the forts, it would have sabotaged his self-surrender. If he had been brought back as a prisoner to Buffalo or Niagara, he would have found it more difficult to prove that his intention had been to remain in the service. Desertion as a form of transfer had been tolerated in the army in earlier decades and was still at times allowed to pass without trial in the antebellum period, but not all those who attempted it proved as successful as Hall in avoiding more serious punishment.<sup>14</sup>

U.S. Private Anthony Powers impressively navigated his way through a particularly long absence – 206 days — without being convicted of desertion, illustrating the lengths to which court martial boards could stretch the definition of absence when they were favorably impressed as to a soldier's motivations. In 1830 Powers had been assigned to work on a barge that would

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<sup>13</sup> NARA DC, RG 153, Box 67, AA152, Nov 24, 1830, Hancock Barracks, Houlton, ME, Pvt. Peter Whieldon.

<sup>14</sup> NARA DC, Box 122, DD159, July 29, 1842, Buffalo Barracks, Buffalo, NY, Pvt Henry Hall.

be traveling from Fort Gratiot, Michigan down to Detroit and back. After arriving in Detroit he “got into bad Company” and when he recovered from his drinking enough to stumble back to the shore, he found that his barge had left without him. He tried heading up river for a few miles, but soon gave up on catching the boat. Uncertain how to get back to Gratiot on his own, he decided to cross the border into Canada so that he could wait in safety without fear of arrest. From Amherstburg, Upper Canada, just across the river from Detroit, he wrote to the U.S. commanding general asking for instructions on what to do next. Not receiving any reply, he apparently occupied himself as he pleased for the next few months and then turned himself in at Niagara, New York. His court martial board converted his desertion charge to absence without leave, believing that his initial departure had been accidental and that his voluntary return from Canada showed he had no intention of leaving the army.<sup>15</sup>

As these cases illustrate, proving an intention to return could be a powerful amelioration strategy, and U.S. soldiers along the northern frontier sometimes used the international border to protect their opportunities for self-surrender. Soldiers crossed the border not only to escape from the army, but also to rejoin it in carefully orchestrated ways that minimized the risk of premature apprehension and helped them establish proof of their intention to voluntarily return. In 1824 two new American recruits, when denied permission to return home and settle their debts, left anyway, travelling through New York from Niagara to Buffalo. Their business done, they then turned around “and returned on Cannada side with a full intention of Crossing to rejoin” their recruiting party. The recruits probably crossed to Canada in order to avoid being arrested by an opportunistic citizen or soldier on their way back to their regiment. They wanted a chance at self-surrender rather than apprehension. The two recruits wrote identical appeals when they

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<sup>15</sup> NARA DC, Box 64, AA87, Jan 4, 1829, Fort Niagara, Niagara, NY, Pvt. Anthony Powers.

were court martialed, each stating that he “went to the President of the Court in Cannada and assured him it was his intention to return [to America].” They re-crossed the border and surrendered themselves at Niagara. Their commanding general ameliorated their sentences, though he ascribed his leniency to their youth and inexperience.<sup>16</sup>

U.S. Private Newcomb Knapp also used the border as a temporary shield to protect his opportunity to surrender himself. He was aboard a ship carrying him back to his barracks after being on furlough when a storm blew the vessel off course in Lake Erie. Having overshot his destination and lacking money to purchase another boat trip, he had to hire himself out and gradually work his way back toward his post. He explained that “In consequence of being known as a soldier at Buffalo and in order to prevent being apprehended there as a deserter, I crossed into Canada and making the best of my way down came as soon as possible and reported myself to Major Whistler Commanding this Post, as an absentee.” His court martial board, impressed with his behavior and his voluntary return, first reduced his charge from desertion to absence without leave, and then went even further. Deciding that, although he had been absent several months, “from the circumstances in evidence and the favourable character given to him,” they “attach no criminality thereto” and fully acquitted him.<sup>17</sup>

Some soldiers who attempted the same kind of strategy did not win any amelioration of their sentences, but their arguments reflected their similar understanding of Canada as a place of temporary safe passage. When Private Frederick Shepherd was refused a furlough to visit his family, he told his captain that he “was determined to take one.” He used a pass to leave the garrison and then crossed into Canada, but he took care to send clear signals that his intent was

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<sup>16</sup> NARA DC, RG 153, Box 5, C48, April 15, 1825, Fort Niagara, Niagara, NY, Pvt. James Bates and Pvt. Ezra Rathbone.

<sup>17</sup> NARA DC, RG 153, Box 71, BB29, Feb 28, 1832, Fort Niagara, Niagara, NY, Pvt. Newcomb Knapp.

not to abandon the army. From Canada, he “wrote to Captain Bennett that I should return.” Furthermore, he “sent...[his army] clothing back from Canada” so that his actions could not be construed as theft, and perhaps as a second pledge that he would come back. He surrendered himself at a nearby post nine months later, but found his court martial board unsympathetic.<sup>18</sup>

Similarly, Private Astor Stevens admitted that he had gone to Canada but stressed that he had not been trying to leave the army.

I was at Fort Gratiot during the Cholera. I was afraid and packed up all my clothes and left. I didn't intend to desert. I met Col. Twiggs a little distance from Camp, and he told me to give myself up at the first [U.S.] military Post. I crossed into Canada and was taken up on suspicion of passing counterfeit money, and kept in prison until last September. Had it been possible I should have delivered myself up before.

It is unclear in his testimony whether his decision to cross the border had been motivated by a fear of arrest or a fear of disease had he travelled on the U.S. side – possibly both. Again, his judges did not ameliorate his sentence, but the portrait Stevens tried to paint in his defense was of a faithful soldier who merely used the border as a temporary protection while he traveled between U.S. posts.<sup>19</sup>

Even soldiers who admitted to having intentionally deserted the army considered that, by voluntarily returning, they might lessen their guilt and lighten their punishments. Many deserters turned themselves in either at their original post or, if they had traveled far from there, at the nearest convenient garrison. In their trials they cited their self-surrender as a mitigating factor. Some of the most successful performances of self-surrender were those in which the returning soldiers took steps to document that their return was freely chosen and acquired witnesses of their good character. U.S. Private Abel Hammond had deserted from Greenbush in New York,

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<sup>18</sup> NARA DC, RG 153, Box 115, DD24, Mar 29, 1841, Madison Barracks, Sackets Harbor, NY, Pvt. Frederick Shepherd.

<sup>19</sup> NARA DC, RG 153, Box 84, CC38, Dec 8, 1834, Fort Hamilton, New York, NY, Pvt. Astor Stevens.

but turned himself in more than a hundred miles away at Oswego. A lieutenant then travelled with him in order to escort him back to his post, and at his court martial this officer was able to offer strong testimony in his defense:

During the time he was under my charge, he conducted himself remarkably well. While at Oswego, some citizens endeavored to persuade him to run away again, but he refused to do. At the time he delivered himself to me, he expressed penitence for his crime, and said his mother was sick, which induced him to desert, not being able to obtain a furlough.

Private Hammond's penitent return was more convincing to the court martial board when sworn to by an officer than it would have been had he presented such a defense under his own oath.

His sentence was largely remitted. Private Francis Xavier Pisol also decided to document his intention to return, but rather than approach an officer he instead turned to a literate citizen who could intercede for him. The citizen's letter was presented in evidence at his court martial, verifying Pisol's place of birth (France) and the facts of his desertion, then confirming that "He has called on me, with the intention to surrender himself to the service of the United States. he now implore your Clemency – he was married before [h]is inlistment." At his trial, Pisol explained that he had overstayed his pass while caring for his sick wife, and his court martial board reduced his charge to absence without leave, as they were impressed by "the peculiar circumstances of the case, and the general good character of the prisoner." These soldiers bolstered their strategy of self-surrender by bringing in respectable intercessors on their behalf.<sup>20</sup>

British deserters also relied on intermediaries to carry messages for them testifying to their intent to surrender. Privates Edward Cooke and John Spelling reached out to a Canadian civil magistrate, who wrote them a letter to deliver to their captain, saying, "two privates who have absented themselves from your regiment came to my house...they are very sorry for what

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<sup>20</sup> NARA DC, RG 153, Box 35, S30, July 26, 1819, Madison Barracks, Sackets Harbor, NY, Pvt. Abel Hammond; *ibid*, Box 31, R17, Oct. 23, 1817, Plattsburgh, NY, Pvt. Francis Xavier Pisol.

they have done, and have requested me to certify to you the circumstance of their intention of returning.” Although their court martial board still convicted them of desertion, they received light sentences. Private Roderick McLean solicited a similar note from a Justice of the Peace in Quebec. Private Jonathan Crowe hid in a civilian man’s house and asked him to go in person to inform a nearby party of soldiers that he had a soldier at his home who wanted to surrender himself. And Private George Flanagan allegedly told a civilian that he “wanted me to come down to Kingston and give him up.” The civilian “told him he had better go and give himself up, that it would be better for him, he said if he set out he would be taken up by the Soldiers, and he would rather I went with him, than be taken up by them.”<sup>21</sup>

British deserters also occasionally surrendered themselves from the United States, but a strategy more often apparent in their general courts martial trials was to make purely rhetorical use of the neighboring republic. Accused deserters deployed their proximity to the international divide to illustrate a counterfactual claim: if they had wanted to leave the army, they would already have done so. They concentrated on the unrealized opportunity for escape that the U.S. represented in order to claim credit for resisting its call. This was an indirect means of proving their intent to stay in service. The strategy appears in some of the earliest Canadian courts martial and recurs throughout the period. A revolutionary war veteran “observes that if he had any intention to desert he had many opportunities of doing it, when near the Enemy, having served in the Campaign 1777 in General Burgoyne's Army.” Another soldier who spent years away from his regiment nonetheless argued that it should be credited to his favor that he “remained in the province of New Brunswick...during which time he could have gone to the

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<sup>21</sup> National Archives, Kew, WO 71/291, May 18, 1835, Halifax, Nova Scotia, Pvt. Edward Cooke and Pvt. John Spelling; *ibid*, Sept 4, 1835, Quebec, WO 71/292, Pvt. Roderick McLean; *ibid*, Dec 24, 1835, St John, New Brunswick, WO 71/293, Pvt. Jonathan Crowe; *ibid*, Apr 5, 1836, Kingston, Upper Canada, WO 71/295, Pvt. George Flanagan.



States, but he never desired to leave his Country, and always intended to return and give himself up.” Defendants repeated that their simple presence in British North America proved that they were faithful soldiers, since if they weren’t, they would be long gone. “It was very far from my intention to desert from my Colours,” Private Joseph Bland explained, “and having been in the Country since 1835 I have had many opportunities of doing so had I wished.” Private John Hamill testified that he “he has been in the Country nearly Nine Years...[and] might easily have deserted as he frequently went on duty into the United States...and could easily have got off, had such been his wish.” Lance Sergeant George MacDonald transformed his years of prior borderland service into implicit proof of a deeply felt martial loyalty. He had visited the U.S. “more times than I can enumerate” and “had I not loved my profession to devotion, I had every opportunity of leaving the service without risk or danger attending me.”<sup>22</sup>

Some U.S. deserters who crossed into Canada used the border to negotiate their surrender in advance while staying safe on foreign territory. Private Jean Baptiste met an American lieutenant in Niagara, Upper Canada, and told him “it was his intention to deliver himself up to me as a deserter.” The lieutenant told him that he could not accept him as a prisoner while they were still on Canadian soil, but told him to turn himself in at Fort Niagara on the American side. Baptiste then crossed the border and surrendered, “saying he regretted his desertion and wished to return to his regiment.” The lieutenant testified for him at his court martial, stressing that he never tried to escape back to Canada, even though “he had frequent opportunities of doing so.” By discussing his intentions beforehand, Baptiste gained an ally in court. Private John Nice adopted a similar strategy. He met with a friend, Private Robinson, in Upper Canada, and trusted

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<sup>22</sup> National Archives, Kew, WO 71/156, Dec 6, 1784, Montreal, Quebec, Pvt. Edward Twaddle; *ibid*, WO 71/296, Sept 23, 1836, Halifax, Nova Scotia, Pvt. John Farley; *ibid*, WO 71/326, June 15, 1846, La Prairie, Canada East, Pvt. Joseph Bland; *ibid*, WO 71/326, June 2, 1846, Kingston, Canada West, Pvt. John Hamill; *ibid*, WO 71/296, Nov 21, 1836, Quebec City, Lower Canada, Lance Sergeant George McDonald.

him to take him back across the border without arresting him. By escorting Nice back to the garrison, Robinson acted as a shield to prevent anyone else from seizing on Nice as they travelled back. Robinson confirmed that Nice “wanted me to take him over to the American Side.” Nice explained that “he finally concluded to come back at all risks, & requested Robinson to go with him so that he might not be apprehended on the way.”<sup>23</sup>

The language, frequent in military records, of soldiers being “enticed” or “persuaded” or “seduced” away from the army provided another way for soldiers to portray their state of mind as being under a powerful outside influence at the time of their desertion. Nice claimed that he had been “enticed to Canada” to begin with by the influence of another private in his company, but that he almost immediately regretted having followed him into desertion. This line of argument suggested that the influence of a persuasive companion, not unlike the influence of liquor, could temporarily weaken a man’s moral judgment and induce him to act in ways that did not reflect his true character. Both officers and enlisted men used this moral vocabulary, suggesting that they shared an implicit model of crime in which a discontented, dishonorable ringleader could corrupt men – usually more newly recruited and better behaved men – who, if left to themselves, would be good soldiers.<sup>24</sup>

The testimony of U.S. Lieutenant Hunt on behalf of a young deserter from Detroit proceeded in a similar vein, summarizing key elements in the process of cross-border negotiation and highlighting the importance of the gesture of surrender. Lieutenant Hunt stressed the youth of the accused prisoner and believed that “He deserted...at a time in which he could be easily enticed away, as desertions from the Company at that time, appeared to be fashionable.” The

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<sup>23</sup> NARA DC, RG 153, Box 32, R45, Aug 26, 1822, Madison Barracks, Sackets Harbor, NY, Pvt. Jean Baptiste; *ibid*, Box 118, DD81, July 19, 1841, Poinsett Barracks, Buffalo, NY, Pvt. John Nice.

<sup>24</sup> *ibid*, Pvt. John Nice.

young private eventually wrote to his lieutenant from Canada, asking whether he would be spared punishment if he surrendered. Hunt was unwilling to make promises and told the deserter he would have to face a court martial, but he predicted a light sentence as long as the soldier remembered “to be careful in delivering himself up, not to allow himself to be taken, which would change the nature of his case.” The lieutenant advised the deserter that another company officer would soon be crossing over the Detroit River, and advised him to surrender himself to that officer while they were both still in Canada. By following this advice, Private Samuel Aldrick managed to escape his desertion court martial with a punishment no heavier than a temporary pay stoppage.<sup>25</sup>

However, negotiating a cross-border surrender in advance was not always a safe strategy, as face-to-face discussions could be clouded by intoxication or cut short by force. Borderland deserters were in a unique position in that they did not need to hide themselves from their former comrades and officers in order to remain at liberty. They seem to have socialized with their former associates easily. When one soldier in Detroit mentioned that he planned to cross to Canada “to see the boys,” his officer understood that he meant “men who had previously deserted.” But this proximity carried certain risks. In some cases, it was the simple risk of force, since as we have seen in previous chapters, the legal asylum of the border was not consistently respected. When Private John Calvin met with his former sergeant in Canada to discuss the possibility of surrendering himself, the negotiations were cut short when the sergeant summarily and illegally arrested him and forced him back across the border. It was more common, though, for the combination of sociability and liquor to create situations in which deserters in Canada got drunk in the presence of fellow soldiers who then found them more biddable on the question of

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<sup>25</sup> NARA DC, RG 153, Box 116, DD51, May 25, 1841, Detroit Barracks, Detroit, Michigan, Pvt. Samuel Aldrick.

return. Private Thomas Clark had only been in Upper Canada for a day when a musician from his company ran into him there and asked if he planned to come back. Clark was undecided, but they spent the day drinking together, and the musician eventually talked him all the way down to the boat he had waiting on the river. However, at the last moment Clark balked and “when he attempted to leave the boat,” the musician explained, “we had some words on the subject & the prisoner struck me. I then pushed him & he fell into the boat, being drunk, & the boat shoved off & took him over the river.”<sup>26</sup>

Soldiers who hoped to use the border to protect themselves could also be frustrated by deceptive apprehension ploys that took advantage of common tools and symbols of international negotiation or asylum. U.S. Corporal Smith at Niagara got one of his subordinates to forge a fake message of pardon, purporting to be from their commanding officer. With the false promise of mercy in hand, he crossed over into Canada and convinced a deserter there to return with him to the United States. Believing he would not be punished, the deserter received a rude shock when he was confined, tried, and subjected to the full penalties for his crime. On another occasion, a British ensign and a local sheriff in Nova Scotia pursued several British deserters who had stolen a boat and had managed to reach a small island in the open sea. The British military and civil officers happened to encounter an American schooner whose crew proved willing to assist them in their pursuit. They climbed onto the U.S. ship and hid themselves below decks, while the schooner sailed over to the small island where the deserters harbored. Once the ship raised its American flag, the fugitives asked to be let aboard and were promised safe passage to Maine. Handing over their weapons to the ship’s crew as they climbed onto the deck,

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<sup>26</sup> NARA DC, RG 153, Box 114, DD3, Jan 18, 1841, Detroit Barracks, Detroit, Michigan, Pvt. James Welsh; *ibid*, Box 64, AA87, Jan 4, 1829, Fort Niagara, Niagara, NY, Pvt. John Calvin; *ibid*, Box 122, DD159, July 29, 1842, Buffalo Barracks, Buffalo, NY, Pvt. Thomas Clark.

they were taken by surprise when the British authorities in the ship's hold came out of hiding and arrested them. The American schooner dropped them off in Nova Scotia and they returned to face the severities of courts martial.<sup>27</sup>

Deserters also developed ploys to help them resist arrest. Despite the importance of civilian participation in deserter arrests, there were certain risks attached to deputizing inhabitants who might find the plight of deserters sufficient to play on their sympathies. James McPhee, a resident of the Eastern Province of Upper Canada, responded to the call of a neighbor to come assist in capturing several British deserters who were on the run through their fields. However, when McPhee and another civilian cornered the deserters in the woods, one of them “shed tears and Exclaimed, 'By the Lord God we will be shott.’” This soldier was probably quite well aware that his chances of being shot for desertion in peacetime were extremely low, but McPhee took him seriously and felt profoundly shaken. “[T]he Exclamation had such an Effect on the deponent that he said, 'God forbid that I should be the means of getting you Executed.’” Telling them to hide in the forest overnight, McPhee let them escape. When McPhee's actions were discovered, a Glengarry priest and army chaplain commented that “a Similar exclamation under the same circumstance might have a Similar effect upon scores of my countrymen who would with pleasure shed the last drop of their blood for their king & Country.”<sup>28</sup>

Army officers might mobilize an urban crowd to help them catch deserters, but a deserter's distress could appeal to those same crowds and cause them to consider switching sides. A British officer raised a cry of ‘stop thief!’ when he saw a deserter running away from the wharf at Kingston harbor in Upper Canada. Soon the hue and cry raised a crowd, and three

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<sup>27</sup> NARA DC, RG 153, Box 36, S62, Feb 24, 1825, Fort Niagara, Niagara, NY, Pvt. Isaac Cline and Pvt. Charles Stewart; National Archives, Kew, WO 71/299, Sept 26, 1837, Halifax, Nova Scotia, Pvt. Thomas Anderson.

<sup>28</sup> LAC, RG 8, C-2774, frame 937-38, Oct 1, 1819, James McPhee deposition, vol 169, 36-37; *ibid*, frames 942-943, Oct 25, 1819, Alexander McDonell to Col. Harvey, vol 169, 39-40.

or four of the nearest civilians grabbed hold of the violently struggling man. However, a magistrate soon spoke up and told them to let the prisoner go, and as the onlookers began to suspect the real nature of the man's crime, their support wavered. A soldier described the changing mood as he began "hearing some of the Civilians speak for him [the prisoner], saying that it was a pity to take him as he was a good man. I heard some Civilians whisper, one to another, that he was a Deserter, and tell Camerford [the civilian who was still restraining the prisoner] to have nothing to do with him." In another case a soldier testified that when he arrested a deserter several people on the street began to say that the man would be transported to a penal colony. He concluded that, "I have no doubt that, if the Prisoner had said, we were taking him for Desertion, we would certainly have had a severe trial for it" from the hostile bystanders. In Detroit, a U.S. soldier begged to be allowed to return to the garrison on his own, but when his captor insisted on arresting him, he sat on the ground and yelled for assistance until "his cries of murder were gathering a mob."<sup>29</sup>

Getting arrested reduced a soldier's realistic hopes of amelioration, but even in such circumstances successful defense strategies emerged. Given the incentives created by the reward system, when soldiers protested that they had been prematurely arrested, it was, in certain cases, plausible. Some court martial boards reduced a soldier's charge if they believed he had been picked up while on a relatively harmless drinking spree, though others remained implacable. Soldiers who admitted to their initial desertion often insisted that they had been on their way back when they were caught, and defendants sometimes explicitly ascribed mercenary and unscrupulous motives to the people who arrested them. Private Jacob Kipp explained that "he

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<sup>29</sup> National Archives, Kew, WO 71/296, Oct 10, 1836, Kingston, Upper Canada, Pvt. John Butler; *ibid*, Sept 1, 1836, Pvt. James Jennings; NARA DC, RG 153, Box 145, EE117, July 22, 1845, Detroit Barracks, Detroit, Michigan, Pvt. William Wilson.

was on his way to Troy to give himself up, when he met an acquaintance Leonard Warner, who took him in his waggon to the rendezvous, and got the thirty dollars.” Another private claimed he had passed out drunk and woken up locked in the basement of a grocery, where he remained until the owner came to turn him in as a deserter. Private Joseph Peabody suspected that, during a night of drinking, he had been drugged by two Frenchmen who hoped to knock him out long enough to keep him from going back to his transport ship and then claim the reward for his capture.<sup>30</sup>

Officers, both military and civil, afforded a reasonable degree of credibility to these kinds of suspicions about opportunistic arrests. In 1829 the U.S. War Department expressed concern over “[t]he practice which prevails of enticing soldiers, and particularly new Recruits, from the line of their duty, inducing them to intoxication, and then, with a view to the expected reward, arresting them as Deserters.” Suspicion that these tactics were widespread among inhabitants living near army posts resulted in new regulations reminding officers of their duty to conduct courts martial with care and work to prevent soldiers who were merely absent without leave from being punished as deserters. Officers obeyed new orders to delay the payment of any apprehension reward until the court martial of an accused deserter had a chance to actually determine whether he was guilty of the charge or not. However, this restriction does not seem to have lasted long in practice.<sup>31</sup>

Local U.S. civil officers might also intervene to rebuke inhabitants who were unscrupulous or overzealous in their arrests. In 1820 Private George Wilson fell behind on a

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<sup>30</sup> NARA DC, RG 153, Box 120, DD118, April 4, 1842, Fort Columbus, New York, NY, Pvt. Jacob Kipp; *ibid*, Box 122, DD159, July 29, 1842, Buffalo Barracks, Buffalo, NY, Pvt. Truman Griggs; *ibid*, Box 121, DD149, June 10, 1842, Fort Crawford, Prairie du Chien, WI, Pvt. Joseph Peabody.

<sup>31</sup> NARA DC, RG 94, M1094, Roll 3, General Orders and Circulars of the War Department and Head Quarters of the Army, 1809-1860. October 20, 1829, War Department, Manuscript Volumes 6-7, 240-41.

march due to illness. He communicated with his officers and, once recovered, began to travel from Albany toward Buffalo in order to catch up to his regiment. However, a citizen who met him on the road first offered to hire him if he would desert, and upon Wilson's refusal, he attempted to arrest him instead. Wilson went to the local grand jury in Canandaigua, New York, for protection, and they decided that, since this citizen could produce no proof that Wilson was a deserter or had been advertised as such, that he had no authority to arrest him. A group of "gentlemen" there raised money to pay for Wilson to take the stagecoach the rest of the way and thus avoid any further harassment on the road. One of them, the acting sheriff of Genessee County, wrote Wilson a letter to present to his captain, "stating that he had seen two men of my Detachment in the custody of a Citizen or Citizens who he feared had arrested them, for the purpose of obtaining the bounty, and wished me to be particular, as he liked a Soldier and did not wish to see a Soldier punished for Desertion when he did not deserve it." <sup>32</sup>

For soldiers who found themselves in the custody of a citizen or fellow soldier who planned to turn them in for desertion, one final strategy was to attempt to wrest self-surrender from the jaws of arrest by breaking away from their captors just long enough to reach their garrison under their own power. A group of U.S. soldiers who had spent several days in Amherstburg, Upper Canada, informed the pursuit party who came there to persuade them to return that "It is damned well for you that you did not come to take us by force. If you did you would get damnably flogged." The pursuing sergeant instead offered to treat anyone who returned back across the border with him to a drink in Detroit. Three of these soldiers agreed and followed him back across the border, and he did indeed take them to a grocery in Detroit and buy a round for them. At that point, however, reality began to seep in and the deserters realized

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<sup>32</sup> NARA DC, RG 153, Box 5, C37, Aug 4, 1820, Prairie du Chien, WI, Pvt. George Wilson.



they had put themselves in a precarious position. One member of the pursuit party “tried to keep them confined...by shutting the door and fastening it,” while another went back to the fort and returned with more men to make the arrest. The sergeant again met the recalcitrant soldiers “coming towards the Garrison by themselves. They tried to run in past my Command towards the Garrison gate,” attempting to foil their imminent arrest by turning themselves in at the last moment. They proved unsuccessful, but their strategy emphasized their understanding of the legal weight that self-surrender could carry and their desire to gain at least some of the credit associated with it.<sup>33</sup>

Such efforts sometimes met with assistance from fellow soldiers who were hostile toward citizens who arrested their comrades. In Buffalo, Private David Young, along with another soldier, stole a citizen’s boat and attempted to row to the Canadian shore. The boat owner, Mr. George Patricks, called on a few other men for help and they pursued the deserters across the water, catching up to them as they attempted to climb up a wharf and onto Canadian ground. Young’s companion made it onto land, and those in the boat did not pursue him after that point, but they did manage to pry Young off of the wharf as he was climbing it and dumped him into their boat. They returned to New York and planned to turn Young in at the Buffalo barracks, but “There were several other soldiers there who seemed anxious to get Young away and finally did succeed in getting him into the Garrison.” One private threatened to strike or flog the citizens if they did not let Young go, saying that Young “was drunk and did not know what he was about, and shamed them [the citizens] for bringing him. He also told the man [Young] to go to the Garrison and behave himself.” Young ultimately ran in alone, and no reward was paid for his

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<sup>33</sup> NARA DC, RG 153, Box 110, CC491, May 12, 1840, Detroit Barracks, Detroit, Michigan, Pvt. James Butler, Pvt. Thomas Stafford, and Pvt. Thomas Greig, see also Pvt. Charles Longwith and Musician Charles Francis in the same case file.

capture. A musician who served at the fort and witnessed the altercation reported that “There was threatening language on both sides, & my belief is that the citizens commenced it, calling the soldiers drunkards, rogues and thieves.”<sup>34</sup>

However, even though officers viewed some citizen arrests as questionable, they still relied on the cooperation of civilians to help them stem the high desertion rates that were endemic throughout the American and British peacetime armies. In Young’s case, the officers at Buffalo responded with concern to such a clear instance of interference with a citizen arrest, especially since the arrest had seemed to be justified by Young’s boat theft and his flight toward Canada. They court martialed the soldier who had protected Young, asserting that he had made “threatening gestures towards the said George Patricks, and did thereby so intimidate him in the performance of his duty as a good citizen, as to prevent his report and surrender of the deserter, to the commanding officer.” Officers supported those who made arrests by paying regular rewards and by defining their actions as manifestations of responsible citizenship. Furthermore, Congressional, Parliamentary, and military law set fines as punishments for those citizens who aided deserters by hiring them, buying goods from them, concealing them, or otherwise encouraging their flight. Deserter ads reprinted these legal warnings for the general populace regularly, illustrating that whatever suspicions officers held about overeager civilian arrests were far outweighed by their concerns about the apathy or collusion of the wider population. Even when a court martial board ultimately decided that a soldier who had been arrested as a deserter had in fact only been an absentee, they still routinely repaid the cost of his arrest by making deductions from that soldier’s pay. It was the duty of courts martial to sift absentees from deserters after their arrest, but in either case those who had caught them still received their

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<sup>34</sup> NARA DC, RG 153, Box 113, CC546, Nov 12, 1840, Poinsett Barracks, Buffalo, NY, Pvt. David Young; *ibid*, Pvt. James C Warden.

money. From an officer's point of view, citizens who caught soldiers were too useful to alienate. Enlisted men, however, were more openly antagonistic, as in the case of U.S. Private Rickradmond, who threw stones at a citizen who turned in a deserter.<sup>35</sup>

Attempting to dodge arrest and make a last-minute personal surrender was a desperate strategy that often failed to win soldiers any amelioration, but in the right circumstances it could nonetheless be highly successful. Private John Bartlett deserted from Fort Niagara in New York and had been away for two months when the sentinel on duty observed him in a boat with a citizen, rowing toward the fort. Just as the boat reached the wharf, "the prisoner jumped ashore and said, I give myself up as a prisoner." The citizen in the boat contradicted Bartlett, "& said, I have taken this man and deliver him to you as a prisoner." The citizen received his \$30 reward, but at the subsequent court martial Bartlett was able to capitalize on his simple, rushed jump out of that boat and his declaration of self-surrender to eloquently plead for clemency. He insisted that he "came back voluntarily and willingly and delivered myself to the Sentinel as a Deserter," and that any claims to the contrary were "unjustly urged against me." He buttressed this assertion by writing a rhetorically rich defense statement in which he presented himself as a man of sensibility, honor, penitence, and respectability:

It is with feelings indescribable, but deeply and keenly felt, that I acknowledge the crime alledged against me; and I have nothing to urge in palliation of my crime, except, that it was done without meditation, and while under the influence of passion – And after I returned to my right mind, I was deeply concerned at the step which I had taken; and after mature deliberation I resolved to return to my Company and surrender myself as a Prisoner, and suffer such punishment as a Court Martial might deem proper to inflict upon me....I hope that this court will consider the respectability of my family, and will not entirely blast my future prospects and expectations, by inflicting a heavy and ignominious punishment upon me.

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<sup>35</sup> *ibid*, Pvt. James C Warden; NARA DC, RG 153, Box 118, DD81, July 19, 1841, Poinsett Barracks, Buffalo, NY, Pvt. John Rickradmond.

Bartlett's claims to what was essentially a class identity – a middle class respectability as evidenced by his literate and sensitive expressions of proper feeling and by his family's reputation – seem to have helped convince the court martial board to credit his claims of voluntary return. As many other soldiers did, he also approached the problem of intent by claiming that he had been under a powerful influence which temporarily placed him out of his "right mind" – but in Bartlett's case, this influence had not been drink or bad company, but rather the force of "passion." The court martial initially condemned him to a standard battery of harsh punishments. However, the officers of his tribunal then appended a recommendation for clemency, saying that "in consequence of its appearing in evidence that it was the prisoner's intention to surrender himself, the court recommend that his sentence be remitted [sic] with the exception of making good to the government the amount paid for his apprehension and the time lost by desertion." Bartlett emerged from his court martial facing only a \$30 fine and two months of extra service. By the standards of his time, this was an extremely light sentence, and he had won it by performing an act of self-surrender in defiance of his arrest, and by appealing to wider cultural understandings that suggested that "heavy and ignominious punishment" should not be applied to persons of "respectability."<sup>36</sup>

#### *Punishment as Degradation and the Performance of Respectability*

The U.S. army's court martial procedures and its wide variety of martial punishments were largely inherited from the British. At the outbreak of the American Revolution the fledgling Continental army adopted the British army's established Rules and Articles of War, which declared that deserters "shall suffer death, or such other punishment as by a court-martial shall be inflicted." That broad qualifying clause – 'such other punishment' – gave court martial

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<sup>36</sup> NARA DC, RG 153, Box 78, BB165, Oct 15, 1833, Fort Niagara, Niagara, NY, John F. Bartlett.

officers free reign to design whatever punishments were likely, in their judgment and in reliance on army tradition, to be effective in deterring similar crimes. Army tradition contained no shortage of options aimed at inflicting pain and shame on the criminals. During wartime, executions, normally by hanging or firing squad, were performed before the assembled troops as exemplary warnings (although most deserters, even in wartime, were not subjected to capital punishment). In peacetime executions were very rare, but floggings were accorded similar exemplary status, with the offender most often tied to a wooden triangle before the assembled troops and whipped by a succession of fellow soldiers, usually the army musicians. Musicians often included the youngest recruits, some being boys rather than men, and it may have been seen as particularly humiliating or emasculating for a man to be publicly whipped by a youth.<sup>37</sup>

A series of bodily shaming practices, of greater and lesser permanence, were also traditional punishments for desertion. In rare cases deserters were sentenced to have their ears cropped, meaning that part or all of each ear would be cut off. More commonly, if a deserter was dishonorably dismissed from the service, his “drumming out” ceremony could subject him to having his head shaved, or half his head shaved, as a mark of public humiliation which was designed to be stinging but temporary. Similarly, he could be stripped of his military clothing and instead given “parti-colored clothes” – the black and yellow uniform of convicts – or given a straw halter to wear about his neck as a sign of his fall from manhood into brutishness. More literal and permanent brands were also applied. In rare cases this branding was done with a hot iron, but in the majority of cases the branding sentence was carried out by tattooing with “india ink.” Although the frequency of this punishment decreased over time, deserters continued

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<sup>37</sup> Journals of the Continental Congress, Sept 20, 1776, Articles of War, Section VI, Art. 1. The Avalon Project: Documents in Law, History, and Diplomacy. Yale Law School, Lillian Goldman Law Library, [http://avalon.law.yale.edu/18th\\_century/contcong\\_09-20-76.asp](http://avalon.law.yale.edu/18th_century/contcong_09-20-76.asp) [accessed 11/20/16].

throughout this period and on into the Civil War to have the letter “D” or the word “Deserter” stained into their skin at the hip, the thigh, the cheek, or the forehead, depending on the level of public or private shame their judges wished them to bear in their future life (the hip seems to have been the most common location for the brand). Deserters who were not killed or subjected to the shaming rituals of drumming out were often confined at hard labor, sometimes for several months and other times for the entirety of their enlistments. Confinement could be made more onerous by specifying that a ball and chain would be attached at the leg or the neck, that pay would be docked or cancelled, that a soldier should be placed in solitary confinement or a ‘black hole,’ or be kept on bread and water, or be forced to wear a heavy, pronged iron collar similar to those employed in the slave trade. And these were just the formally legal sentencing options – another host of painful, humiliating, and at times deadly practices existed outside of the official records in the realm of ‘camp punishments’ administered by officers at their own discretion.<sup>38</sup>

However, from the outset an important legal limitation separated American practice from that of the British service. At the suggestion of George Washington, the Congress set a legal limit to the amount of flogging to which general courts martial could sentence any defendant: the initial limit, set in 1775, was one hundred lashes, but within a few years this was reduced to thirty-nine. This constituted a very significant departure from British practice, which set no upper limit to the number of lashes to which a soldier could be legally sentenced. It was common in the British army of the late eighteenth and early nineteenth century for deserters to receive sentences from five hundred up to fifteen hundred lashes for a single offence.

From the first, then, the practice of flogging emerged as a point of distinction between the British and the Americans, and over time as public discussion, debate, and reform movements

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<sup>38</sup> Skelton, *An American Profession of Arms*, ch. 14; Peter Burroughs. “Crime and Punishment in the British Army, 1815-1870.” *The English Historical Review*, vol. 100, No. 396 (Jul., 1985), 545-571.

began to focus on army punishments, it was flogging that took center stage. In England, by the first decade of the nineteenth century popular animus against flogging moved from the level of local resistance into more widespread public critiques and the beginnings of political protest. Individual cases highlighting the unwarrantable death of victims in the aftermath of their ordeals began to be more widely publicized. In 1802 the court martial of Joseph Wall in London, who twenty years before while overseas had summarily ordered the flogging of several privates who had then died of their injuries, became a public sensation. He was found guilty of murder and executed, sending a powerful message that practices that had long been overlooked in the British army would no longer be so easily tolerated.<sup>39</sup>

British and American critiques of flogging emphasized the idea that this punishment was degrading to a man's character and ruined any chance of reformation or future good behavior. In 1785 a London treatise on courts martial stressed that only soldiers who had proved themselves bereft of honor – such as deserters – should be subjected to the lash:

Punish not a man in the same manner, for perhaps a few hours absence from his quarters, as if he had been a deserter from his country, and a violator of his sacred promise; for it is not the number of lashes, but the shame that must attend it, that constitutes the punishment. To fix a lasting, visible stigma upon an offender, is contrary both to humanity and sound policy. The wretch, finding himself subjected to continual insult, becomes habituated to his disgrace, and loses all sense of shame.

In this conception, the punishment actually lowered the character of its recipient by making it impossible for him to avoid the contempt of those around him and thereby hardening him to accept a disreputable role in life. By fixing him with permanent marks – the scarring on his back – the army would weigh him down with a signifier that could be read as criminal and shameful

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<sup>39</sup> J. R. Dinwiddy, "The Early Nineteenth-Century Campaign against Flogging in the Army," *The English Historical Review*, vol. 97, no. 383 (April 1982), 308-331; Joseph Cozens, "'The Blackest Perjury': Desertion, Military Justice, and Popular Politics in England, 1803-1805," *Labour History Review*, vol. 79, no. 3 (2014).

by anyone who saw it. In 1810 an American military dictionary emphasized similar points, arguing that flogging was a disgrace to both the British and American armies, and reiterating that “A man who has been once punished by whipping, as practiced in the military service in England, must be totally lost to every sentiment of feeling reconcilable with military spirit, or that sense of honor which can never exist but where there is self-respect.”<sup>40</sup>

A French-Canadian memoirist, Phillipe Aubert de Gaspé, retained similar impressions of the brutalizing nature of flogging and he accepted British officers’ cultural presumptions surrounding its infliction. As a young man growing up in Quebec City around the turn of the nineteenth century, he frequently overheard the floggings that the resident British army conducted inside their barracks. He recalled that “there passed few Fridays on which those who attended the upper-city market of Quebec were not saddened by the cries of pain coming out of the barrack courts.” Yet he was fascinated by those stoic soldiers who managed to endure five hundred lashes without a murmur.

I often had occasion to discuss this with several British army officers; they all agreed that twenty-five to thirty bad subjects in each regiment were the only ones who received this cruel punishment. The majority of them, they said, became almost insensible to pain after frequent floggings. Their flesh hardened enough that the strap only struck skin dry as parchment glued onto the bones. They added also that the court martial judges avoided as far as possible inflicting floggings on those who had never before received that punishment, because, after having once been subjected to it, they thereafter became incorrigible.

Gaspé believed the army should abandon such barbaric punishments, but he also observed that British soldiers’ glory on the battlefield must have depended on the fact “that very few of them have been degraded by the whip,” and so remained capable of valor.<sup>41</sup>

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<sup>40</sup> Stephen Payne Adye, *Treatise on Courts Martial*, 260; William Duane, *A Military Dictionary* (Philadelphia: William Duane, 1810), 556.

<sup>41</sup> Phillipe Aubert de Gaspé, *Mémoires* (Ottawa: G.E. Desbarats, 1866), 32-33.



As a result of this understanding of flogging as a practice that attacked a man's honor and moral character, reformers often focused primarily on the specter of militiamen or patriotic volunteers, rather than on regular army enlisted men, becoming victims of this ordeal. There was a widespread conception of the regular army in both Britain and America as largely foreign, lower class, and a refuge for bad characters whose poverty, desperation, vice, or failure at honest industry had driven them into the rank and file. Sir Frances Burdett, the Westminster MP who would lead a decades-long effort in the House of Commons to abolish flogging in the British army, began his political campaign in 1808 by objecting to an expanded militia law that would subject more ordinary citizens to the same military punishments as the regular service. A similar objection arose in the U.S. House of Representatives in 1809, when a congressman clarified that he wanted to reform the "too rigorous" system of army punishments, not out of any concern for "those mercenaries who sold themselves to be kicked and cuffed and 'shot at for sixpence a day' [that is, the regular enlisted men]: but he meant the militia, the freemen of the country, who were to be governed by those rules & articles when in actual service" and who could not, on any account, be submitted to a system "in which there was not one principle of liberty."<sup>42</sup>

Burdett in the House of Commons in fact wanted to abolish flogging altogether, not only for the militia, but he chose examples of sterling citizen militiamen becoming victims of floggings in order to arouse public indignation, a trend which would continue in the British press for many years. In 1811, he focused on a Liverpool clerk's case. A newspaper summarized that Mr. Taylor, "a person of most excellent character, in reputable life, being clerk to the society of Light and Boat owners in Liverpool...a man of good character and education, and a mind much superior to his station," was sentenced to 200 lashes for having written and submitted to a

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<sup>42</sup> Dinwiddy, "Campaign against Flogging," 312; *Federal Republican* (Baltimore MD) 5/30/1809, 1.

newspaper a song lampooning some elements of the militia service. The paper emphasized the distress of Taylor's wife, his compatriots' horror, and Taylor's own "magnanimous and manly coolness" in facing his punishment. Burdett urged "some parliamentary interference...to cause a stop to be put to a species of punishment so calculated to excite horror and disgust to the army...which was abhorrent to every feeling of humanity as well as British freedom." Even for those who cared little for the honor of soldiers, there was the honor of the nation to consider.<sup>43</sup>

In America, increased martial furor surrounding the War of 1812 led to a transformation in the composition of the army as an influx of volunteers paired with rising nativist sentiment to create a temporary new image of a more respectable citizen force. Anticipating this trend and anxious to encourage the enlistment of such a desirable class of recruits, the army voluntarily suspended flogging in 1811 and Congress formally outlawed flogging in the army, though not the navy, in 1812. As we have seen, however, flogging continued to occur illegally and probably pervasively as officers dealt soldiers summary beatings outside of court. It is unclear whether, by pushing the practice out of the official records, this legal interdiction served to increase or decrease its overall infliction. Certainly those floggings that did occur no longer observed the limitation to 39 or 50 lashes that had constrained courts martial sentencing.<sup>44</sup>

Furthermore, as the British anti-flogging campaign persisted over the following decades, parliamentarians and the British press repeatedly emphasized that their nation stood alone in continuing to condone such a disgraceful and barbaric punishment, pointing to the abolition of flogging in Napoleonic France and republican America in order to drive home the idea that England was undercutting its own moral stature and reputation for liberty on the international stage. As American newspapers circulated these reports from England, a wider public audience

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<sup>43</sup> "British House of Commons, May 25, Flogging Local Militia," *Weekly Aurora* (Philadelphia, PA) 8/27/1811, 98.

<sup>44</sup> Skelton, *An American Profession of Arms*, 262, 267-273.

became aware of, and proud of, the abolition of flogging in the U.S. army. However, the fact that it was the second-hand British view of the American army that was reiterated most widely in the U.S. press, unaided by closer examination or attention to the actual conditions at the various frontier posts, led to complacency and distortions in reporting, particularly once flogging was reintroduced into American military law in the 1830s.<sup>45</sup>

The 1820s and 1830s were a time of investigation and debate about U.S. army punishments as Congress gathered data and collected recommendations for reforms that might stem the perennially high desertion rates. High-ranking army officers responded to Congressional queries by writing recommendations for legislative measures that might help reduce desertion, and most of these officers believed that the root cause of the problem was the low class of men who made up the enlisted ranks. In his 1830 report on desertion, the Secretary of War explained that "Men of intemperate habits and of dissolute character should not be received into the army, as those who are regulated by better principles cannot be associated with such persons without feelings of humbled pride." The dissolute general reputation of the enlisted men was, in his view, scaring off the type of men who would make better soldiers. Harshly punishing such men would simply not be effective as a means of reform. "Different feelings, altered habits, higher self-respect, and honorable incentive, in some form or other, must be produced, or the evils deservedly complained of in our army will continue." General Alexander Macomb, the commander of the army, agreed that "When men of good character shall be procured, the necessity for punishment will naturally wear away. The soldier being content with his situation, governed by wholesome regulations, and under the protection of experienced and well informed officers, will find his condition so much improved, that his attachment to the

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<sup>45</sup> Dinwiddy, "Campaign against Flogging," 319.

service will banish from his thoughts all ideas of desertion.” Macomb and others advocated taking moderate steps to improve the material conditions of army life and reform the wide-ranging system of army punishments, but they framed this less as a measure to address the just causes of discontent among the men currently in service than as a recruitment ploy to attract the better class of men who were presumably put off by the army’s low wages and tyrannical reputation.<sup>46</sup>

They argued that the best method to attract men of more respectable character into the army, men who would have too high a sense of their own dignity to shame themselves by deserting, would not be through reliance on punishments, but rather through an increase of rewards. The Secretary of War advised Congress to engage men’s enlightened self-interest. “If we inspirit the soldiers of our arm, rather than dishonor them, and excite them through the avenues of honorable emulation, may we not expect a return more in accordance with the dignity of human nature, the character of our people, and the genius of our institutions?” Various recommendations took shape: one suggestion was to open the officer corps to promotion from the ranks so that experienced and meritorious enlisted men and NCOs could, through merit and ambition, rise to positions of authority and not be forever trapped beneath a rotation of young and inexperienced West Point graduates. Another suggestion was to use economic incentives more judiciously. To reward those who faithfully suffered through those first months wherein the temptation to desert was highest, officers suggested withholding a portion of the enlistment bounty for future good behavior. Cash was normally paid to new recruits in an upfront lump sum, but now it was suggested that it should be paid instead after several years of service.

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<sup>46</sup> Secretary John H. Eaton, Department of War, February 17, 1830, as part of report to Senate ““On the Causes of Desertion.” Asbury Dickins and John W. Forney, eds, *American State Papers* (Washington: Gales and Seaton, 1850) Class V: Military Affairs, vol 4, no. 437, 284-286; Major General Alexander Macomb to John Eaton, January 29, 1830, *ibid*, 286-287.

Officers also advocated raising monthly wages, abolishing the bounty paid to recruiting officers for each man they enlisted – which encouraged recruiters to be indiscriminate and at times unscrupulous in filling their quotas – and making it illegal to enlist a man who was intoxicated. These reforms aimed to offer incentives of money and status to encourage good service and to root out abuses among both officers and enlisted men.<sup>47</sup>

At the same time, however, officers also argued that better disincentives for desertion must be reinstated, and they revisited arguments surrounding corporal punishments and particularly flogging. General E.P. Gaines stressed that courts martial had too wide a latitude in sentencing and objected to “the great variety and often apparently whimsical punishments awarded by different Courts Martial. Many of these punishments tend rather more to degrade the offenders, and to render them *incorrigible*, than to produce penitence or reformation.” He objected to punishments like branding, the use of heavy chains and collars, and in some cases the shaming rituals associated with “drumming out” as well. He was particularly concerned with mutilating punishments that permanently marked or crippled men. “All punishments of this description are decidedly objectionable,” Gaines wrote. “Some of the first are repugnant to natural law, and at variance with the genius and spirit of our institutions. All of them tend rather to corrode and destroy the latent elements of moral feeling, and lead the miserable offender to irretrievable infamy, than to open him to the path of repentance and reformation.”

However, Gaines and other leading officers of the army were unified in their insistence that flogging was a necessary and appropriate curb for desertion, characterizing it as the one punishment that was painful enough to actually deter desertion without becoming permanently debilitating. They urged that flogging be legalized once again. Aware of “The theory of the

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<sup>47</sup> Adjutant General Robert Jones, “Report on the Subject of Desertions,” *ibid*, Jan 25, 1830, 287-9.

sentiment which, for some years past, has successfully opposed the infliction of corporal punishment on malefactors in the Army,” General Gaines argued that public concerns about its degrading effect were redundant in the case of deserters, since “I recommend stripes or lashes only in cases where the crime itself degrades the offender so low, that the punishment inflicted on him cannot tend to sink him any lower in the scale of degradation.” Further, the expectation that good men would stay away from the army rather than expose themselves to the risk of such punishment was misguided. “This means of punishing the most vicious, will tend rather to invite good men into the service, than to deter them,” Gaines argued, because it would finally treat desertion with the seriousness it deserved and apply a real deterrent which would be “by bad men, only *feared* as a punishment.” In response to such reports, in 1833 Congress reinstated flogging as a legal punishment in the U.S. army, though the law limited it solely to the crime of desertion and set a maximum sentence of fifty lashes.<sup>48</sup>

Coincidentally, it was around this time that the British parliamentary anti-flogging campaign rejuvenated and began to be more widely publicized in both the British and American presses, and although U.S. public sentiment became increasingly condemnatory of the painful practice, the Americans shaping public debate remained largely oblivious and misinformed as to the status of corporal punishment in their own army. The 1833 reinstatement of U.S. army flogging passed largely unremarked in the British and American press, and U.S. reformist sentiment focused on foreign rather than domestic outrages. In 1836 a New York paper observed that

The dreadful floggings which frequently take place in the army and navy of Great Britain for the most trivial crimes, are a stain upon the national character of the British. We can conceive of no species of torture ever practised by the most ingenious savages, which can exceed in bitter and protracted agony, the sad effects which are ordinarily produced by this dreadful kind of punishment.

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<sup>48</sup> Major General Edmund Pendleton Gaines, “General Courts Martial, Crimes and Punishments,” *ibid*, 290-1.

The historian will regret to record, that a nation, which boasts of its refinement and civilization, should continue in the present enlightened age, to surpass barbarians in cold, unfeeling, sanguinary barbarity.<sup>49</sup>

The British military actually stopped the use of flogging as a punishment for army desertion in 1840, while the revived practice persisted in the American army for another twenty years. These realities were precisely contrary to Americans' popular understanding of the issue.

To the extent that Americans publicized concerns about their own military punishments, they focused on flogging in the navy. By the 1840s there was growing demand to make the flogging of sailors illegal, based partially on the mistaken impression that American soldiers were already guaranteed such protection. Many Americans were also aware of, or participants in, broader reform movements that re-examined theories and practices of punishment in schoolrooms and prisons and homes during this time period. In 1843 an editorialist connected the issue of naval floggings to the various movements against corporal punishment which had taken place or were taking place in other segments of society.

Our citizens all know that *criminals are not* now *whipped by law* – but the thief, the robber, the felon is only confined or made to labour – and yet our fellow-citizens, convicted of no crime, may be whipped by the mere order of an officer on board a ship of war! – And the Apprentices, too, poor friendless boys, or the sons of poor people, glad to get *good places* for them, may share the same fate. Why should sailor boys at sea, be treated in this respect worse than felons on shore? In this day of reforms, the Navy of this Republic ought to have its anti-Republican features blotted out.

The writer mistakenly concluded, “Flogging is done away with in the Army, by law: - Why not in the Navy also.” Public concern culminated in a Presidential message urging Congress to reconsider this objectionable naval punishment, and in 1851 Congress obliged by outlawing flogging in U.S. naval vessels.<sup>50</sup>

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<sup>49</sup> “Death from Flogging,” *Saratoga Sentinel*, 2/23/1836 (Saratoga Springs, NY), 2.

<sup>50</sup> “Flogging in the Navy,” *Portsmouth Journal of Literature and Politics*, 1/14/1843 (Portsmouth, NH), 2; “Flogging in the Navy,” *Daily Evening Transcript*, 9/3/1845 (Boston, MA), 4.

No move was made to reconsider army flogging in these debates. Much of the public remained convinced it was already illegal. Widespread coverage of the punishment of deserters by hanging and flogging during the Mexican American war in the mid-1840s had awakened some Americans to the fact that harsh punishments were still practiced in the army, but there remained confusion over whether or not these were only wartime measures. Sporadic, critical reports of army floggings appeared in the American press of the 1850s, but never to such an extent as to incite a new public reform campaign. Army floggings would remain legal until the approach of the Civil War created another large influx of volunteers and once again raised the concern that respectable citizens might be subjected to such a degrading punishment. Flogging was permanently abolished in the U.S. army in 1861.

With public sentiment sympathetic in principle but oblivious in practice, during the antebellum period the main forces set against abusive punishments in the U.S. army were the commanding generals who attempted to ensure that flogging was administered in its limited and legal form while continuing to condemn any punishments they considered unusually harsh or outside the bounds of law. Many of the leading U.S. generals – Winfield Scott, Edmund Pendleton Gaines, and Abraham Eustis, for example – had studied or practiced law in their civilian lives, and they took seriously their responsibility to judicially review general courts martial proceedings. They proved willing to unilaterally reject courts martial results and remit deserters' sentences if they felt that evidence had been mishandled or did not support the charge, if procedural mistakes in the oaths, evidence, or record-keeping of the courts had been made, and especially if they felt the sentences were inappropriate either in their cruelty or their lenience.

Major General Gaines repeatedly castigated officers in the strongest terms against mutilating sentences. "Our Constitution – the charter of our beloved Union forbids all such



punishment, when it forbids ‘cruel and unusual punishment,’ (see 8<sup>th</sup> article, amendments of the Constitution of the U.S.) The infliction of the permanent mark under consideration [the word ‘deserter’ to be tattooed onto the right hip], is both cruel and unusual.” By 1840 his exasperation expressed itself in increasingly emphatic rebukes. “The commanding General disapproves the sentence of the Court because the punishment of being ‘marked with India Ink by Tattooing’ is authorized by no law, is repugnant to the spirit of our Free Institutions which rest upon and vindicate the rights of man and self Government, and is in absolute violation of the often reiterated orders of the General.” He reemphasized that such sentences would be “calculated to bring the rank and file of the Army into the deepest odium” and affirmed that “If a soldier is of any value to the service, he cannot but [expect] that his officers can in no case inflict degrading punishment not expressly prescribed by law, without themselves committing a dangerous violation of that law which we are all sworn to support.” The review system that required all sentences to be read and approved by commanding generals before they were carried into execution helped to ensure that certain types of corporal punishment were increasingly ameliorated. However, officers who punished their men outside the formal procedures of the military courts were difficult to control. Generals occasionally called for such men to be tried for their crimes, but their court martial boards were made up of sympathetic fellow officers who usually either acquitted them outright or let them off with light sentences. The legal punctiliousness and reformism of the army’s highest ranking officers, like the sympathy of the wider public, was of limited effect in protecting soldiers from abuse. Soldiers had to do their best, therefore, to defend themselves.<sup>51</sup>

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<sup>51</sup> Skelton, *An American Profession of Arms*, 270-73; NARA DC, RG 153, BB133, Fort Crawford, Michigan Territory, April 22, 1833, Head Quarters Western Department, Order 15, issued June 11, 1833, 42; NARA DC, RG 153, Box 109, CC472, Feb 6, 1840, Fort Snelling, Iowa Territory [Minnesota], 26-28.

Given that both civil and military discussions of punishment and desertion emphasized respectability as a defining feature of desirable recruits who would not need to be harshly punished, it is perhaps not surprising that some accused deserters worked to embody that image during their trials. Accused deserters, in addition to their rights to call or cross-examine witnesses and to make an oral defense at their trial, also had the right to prepare a formal written defense statement for the court's consideration before sentencing. Many defendants did not do so, probably due to limitations on their literacy and their lack of any legal counsel, but those who did submit written appeals had a unique opportunity to display signs of sensibility and to implicitly appeal to the broader cultural expectation that some remittance of degrading punishments was their due. They used this opportunity at times to discuss their background, to paint a sentimental portrait of their families, to exhibit their erudition or their sense of martial honor. Some expressed righteous self-respect, others sensitive repentance and shame, but the literary possibilities of prepared words allowed some deserters to create voices for themselves that they hoped would bridge the perceived class gap between officers and enlisted men. Through the style of these statements, accused deserters aimed to establish empathy or sympathy with their judges and to portray themselves as possessing good characters that merited some amelioration of punishment.

A soldier could carefully craft the style of his written defense to exhibit a gentlemanlike manner and sensitivity to honor. In 1818, Private Seth Holcomb confessed to his court martial board in Champlain, New York, that as he was "Unacquainted in making this my defence, I feel ignorant whether it will meet the approbation of the court, as it respects its formality." Its formality of language was carefully prepared. Holcomb proved skillful in adopting a style that was designed to impress his audience with his erudition and merit. He established his good

character first by invoking his generally clean disciplinary record: “Four years have elapsed, and never has a charge similar to the one now before me, been exhibited, either, in presence of a Court, or whispered among my most inveterate enemys. Never have I been censured by that fraternal band, that has heretofore stood the test of ages, and on whose foundation religion, and morality, has continued to be the cornerstone, and its members, pillars supporting the fabric of unanimity.” He then laid claim to the honor of service during the War of 1812. “Having once obtained an Honorable discharge, for my faithful services, during a period which was considered by evry one that possessed the least spark of Amor Patria as all momentous; I once again, clothed myself in the garb of a soldier, ready, and willing, to serve the period that I had so solemnly pledged, my Oath and honor.” Finally, he took offense at having his reputation impugned, as any man of honor would be expected to do: “and now, to be charged with an attempt to Desert, in violation of all Laws both Human and Divine, is Derogatory to the feelings of one, who considers himself injured by the assertion.” This opening passage of his formal defense established his martial honor, his masculinity, and his proper self-regard, all of which were in and of themselves claims against degrading punishment, beyond the facts of his case that he then went on to review. This style was not merely a medium for conveying his defense, it was a substantial part of that defense.<sup>52</sup>

U.S. Private William Harris, an old soldier, used his written defense to establish his patriotism as proved by his active service, and that of his entire family, in the wars that forged America. He spoke of ancestors who fought in early colonial wars against Native Americans in Rhode Island; his father and uncle were Revolutionary War veterans; he himself had been a drummer boy in the War of 1812, beginning an on-and-off martial career that spanned decades.

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<sup>52</sup> NARA DC, RG 153, Box 31, R26, July 27, 1818, Rouses Point, NY, Pvt. Seth Holcomb, 16-17.

He related small, personal memories of campaigning – the parching heat of long marches through Florida, the pride he felt when he had been allowed to carry his general’s sword to his baggage – and he effused over the “sublime and beautiful sentiment” expressed in patriotic poetry. He drew a small collection of stars and stripes in the margin of his defense statement, adding a caption that played on the image of the national flag in order to make a witty appeal against being subjected to corporal punishment. “The Star Spangled Banner The only thing American that can bear stripes,” he wrote. Horrified at the prospect of punishments that would be bodily shaming, he emphasized his family status and pride. “I have connexions that are respectable and wealthy and how could I ever show myself before them again.” He urged his court martial board to believe “that I have a just claim to the proud and noble name of American.” The prisoner’s old age and evidence that he had been rejected as unfit for further service influenced his court martial board to leniency, but so did the rhetorical performance of his defense statement. His judges noted among their reasons for recommending his pardon “their conviction that he had previous to his offence, served long and faithfully.”<sup>53</sup>

Written defenses were likewise an arena for sentimental appeals that rested on the defendant’s role as husband and father. At Fort Niagara an accused deserter stated that he had been enlisted while drunk – a practice that was then illegal – and “left behind me a Wife, and four small Children who were looking up to me for their daily food; the thoughts of their situation were to me unsupportable, and caused me to Desert that cause which I had pledged myself (while in my inebriating cup) to support.” Another defendant, after assuring his judges that he had “never thought that...[he] should ever stain his fingers, in making a written appeal, for an act he deemed so disgraceful” as desertion, explained that he had honorably served out his

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<sup>53</sup> NARA DC, RG 153, Box 138, DD457, Aug 22, 1844, Detroit Barracks, Detroit, Michigan, Pvt. William Harris.

first term of service and re-enlisted upon being promised the back-pay and clothing he was owed. He was also assured that he could have “liberty” – meaning approved furloughs – to visit his wife. He found, however, that he was not paid, and each time he requested leave “as often it was my lot to be refused, with an answer, ‘No you Damn’d Rascal.’” That language, particularly the term ‘rascal,’ was demeaning to his masculinity, as was his officers’ refusal to allow him to fulfil the paternalistic duties he owed to his bride, as he was “married to one whose youth requires a protector.” He invited his judges to put themselves in his place, asking “what would be your sensations, on thus being peremptorily and frequently refused and Damn’d.” He explained that he had deserted because he could not suffer the denial of his rights and liberties. His discontent was “determined on my rights, which the Captain had so fairly promised to see me paid; the loss of my Liberty, which he did on my re enlisting so fairly promise, and the disgraceful correction which he used towards his men; and above all the prevention of my visiting her, for whose sake only, I wanted occasional Liberty.” He had been offended by disgraceful treatment and appealed to his judges to empathize through “that responsive feeling of humanity, that you may by your sentence shew clemency to one, who never wished to violate the oath he had taken, nor to dishonour himself.”<sup>54</sup>

While some defendants portrayed their martial and masculine honor, others could seek their officers’ empathy by dramatizing the agonies of their personal embarrassments and failures. When Private John E. Clark surrendered himself as a deserter at Sackets Harbor, New York, he wrote a lengthy defense that seemed to draw on the prose style of melodramas. He described the inner torments he experienced on entering the army, a step which cut him off, in his own estimation, from his true social sphere. He had received medical training and alternated between

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<sup>54</sup> NARA DC, RG 153, Box 78, BB165, Oct 25, 1833, Fort Niagara, Niagara, NY, Pvt. Olden Drake, 85; *ibid*, Box 30, Q13, Jan 24, 1822, Fort Columbus, New York, NY, Pvt. Henry H. Hess, 11-15.

the skilled work of a clerk and a medical practitioner, until “an unfortunate speculation” made him financially desperate. “I could not at that time bear the idea of asking assistance from those that had known me in better days,” he confessed, “and in a moment of despair I enlisted.” He portrayed this despair as an overpowering sense of social isolation. “I had buried myself as it were from the world, torn myself from the bosom of society, to which I could have no hope of returning untill the expiration of five years.” He described his despair with ornaments of erudition, including Latin and poetic phrases.

He spoke of the loss of “hope, that Ignis Fatuus of the mind,” and portrayed his desertion as an impetuous act for which his conscience and his patriotism, still fundamentally upright, reproached him.

Heedless and impetuous without reflection has been the cause of many errors of my life. In a moment of transient excitement I conceived the thought of Desertion. Without reflecting, I committed the act. No sooner done than I repented it. I soon felt that I was an exile from my native land, that liberty which I longed to breathe failed to bring the happiness I expected; I felt that I had bid adieu to the land of my birth and could only exclaim with the Poet

‘Where’er I roam whatever nations to see  
My heart untravell’d fondly turns to thee.’

There seemed an impenitable barrier between me and all that I held dear; the only consolation I had was to think that no friend knew my situation.

He rested his hope for mercy on his eloquent expressions of repentance. He claimed he had decided to surrender himself “as the first step to retrieve the past,” and hoped that his voluntary return, the distress and social discombobulation which had accompanied his transition into the army, and his sensitive capacity for moral feeling might prove grounds for leniency. “Censure me not to[o] severely for my past conduct, the secret springs that move a man to the commission of crime is seldom known. Perhaps the man doomed to linger out the remains of a wretched life in the gloomy recesses of a dungeon is capable of the most exalted feeling.” By portraying himself as a man of sensibility, Clark laid claim to a middling, respectable class

identity that set itself in contrast to the idea that, as a deserter, he was lost to the claims of honor and deserving of degrading punishment.<sup>55</sup>

British Private William Rodgers, at his desertion trial in New Brunswick, wrote in a similarly literary style to describe his deep contrition and his sense of having fallen from the social status he had previously held. Describing his reason as temporarily unseated by passion, “in a moment of frenzy of madness I must call it I attempted to desert. I attempted to leave the cause to which I had taken the oath of inviolable fidelity. To say that I did not succeed is now the chief happiness I possess. The moment reflection gained the ascendancy over my passions, I saw the enormity of my conduct.” Unable to face the shame of returning to his regiment, he claimed to have suffered the tortures of conscience. “I saw myself a wanderer in a foreign land. An outcast - a Deserter from all that I had ever been taught to reverence and respect. What could I do?” Acknowledging that justice condemned him, he painted a glowing portrait of the character of his officer judges for both their courage and compassion. He asked them to show mercy in response to his sincere contrition. “I speak to British Officers, [to] men who have hazarded their lives for the cause I so basely deserted[,] to the brightest jewels that enrich the diadem of Majesty...whose Fathers, whose Brothers, whose selves has sought for reputation in the Cannons mouth. Nor do I address myself in vain. Conscious as I am that the truly Brave are ever the most generous and humane.” Claiming a previously “irreproachable” character, now sunk by his misdeed, Rodgers wrote: “I wish I ardently wish to be again placed in the same scale of society I so basely deserted.” He expressed himself as painfully aware that he had lost his honorable social position when he left the army.<sup>56</sup>

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<sup>55</sup> NARA DC, RG 153, Box 115, DD24, Mar 29, 1841, Madison Barracks, Sackets Harbor, NY, Pvt. John E. Clark, 56-60.

<sup>56</sup> National Archives, Kew, WO 71/292, Sept 24, 1835, Fredericton, New Brunswick, Pvt. William Rodgers.

Written defense statements offered literate enlisted men an opportunity to bridge the class gap separating them from their officers and lay claim to sensibility and respectability. According to the cultural values of their time, winning such status in the eyes of their martial judges might help protect them from the severe punishments theoretically reserved for men already degraded beyond reform. Throughout the time period under consideration, soldiers understood that perceptions of their good or bad character would strongly influence the punishments to which they were subjected. British and American courts martial routinely took evidence from officers regarding their impressions of a defendant's martial character, looking for qualities such as orderliness, dutifulness, subordination, and sobriety. In many cases evidence of such attributes, testified to by officers, decided the outcome of a prisoner's sentence. The written defenses composed by enlisted men themselves, however, focused on different and potentially higher-status attributes of character and masculinity, particularly the quality of sensitivity to honor and shame. That was the very virtue thought to be destroyed by the lash, and displaying it through the style and substance of their words was another means by which soldiers sought amelioration.

### *Conclusion*

In both the British and American armies, accused deserters developed an array of defense strategies that attempted to sway their courts martial boards into granting ameliorations of punishment. The extent of their efforts and successes has been previously overlooked in Anglo-American and Canadian military, legal, and borderland scholarship. Drawing on general courts martial records to recover details about deserters' methods of return, a significant rate of self-surrender became visible in U.S. borderland desertion cases. On both sides of the border, civilians took part in policing their local militaries for the sake of rewards. In order to understand these facets of the borderland desertion experience, it was necessary to reconstruct



the contexts in which the reward systems operated. The increasing accessibility of rewards in the nineteenth century created some concerns about mercenary arrests. These in turn influenced the type of defensive claims soldiers deployed in court.

In desertion cases, the chief legal problem was to establish intent, a fact that seems to have been widely understood among enlisted men. Reading their defenses while keeping this goal in mind highlights the variety of strategies they used to try to disprove any intention of leaving, or alternatively to prove their intentions to return. Many directly stated they had no intent to desert. Most of those who mounted a defense portrayed themselves as being temporarily under a powerful influence - such as drink, persuasion, or passion - that rendered them unable, or less able, to make their own rational decisions. Some used the international border instrumentally as a means of communicating and proving their intentions. In American cases that involved crossing and re-crossing the line in carefully orchestrated gestures of surrender. In British cases, defendants pointed to their long-standing proximity to the United States to argue that they had passed up good opportunities to desert and must therefore be recognized as loyal soldiers.

Some accused deserters also submitted written defenses in which they attempted to establish a level of respectability that would make their corporal punishment problematic. Contemporary Anglo-American debates over corporal punishment focused on flogging as a punishment that inevitably degraded its recipient rather than reforming him. However, American public opinion – shaped by British anti-flogging campaigns – was misinformed about the actual practices of its own army, and therefore increasing public condemnation of flogging had little ameliorating effect on the punishments U.S. soldiers faced. Both high-ranking generals and lower-level regimental officers wanted to attract a better class of recruit, and in performing their defenses

literate deserters tried to show they belonged to that better class by displaying the desirable qualities of sensibility and honor.

Deserter defendants were central actors in the history of borderland military justice as they pursued amelioration strategies both inside and outside of court. The officer judges and generals who decided sentences were not the only significant participants in courts martial proceedings. Rather than reading deserters' defense statements as transparent descriptions of their motives or dismissing them as ineffective excuses, this chapter instead engages with them as examples of strategic communication. Similarly, deserters' reactions to arrest and their processes of surrender could also be deliberate efforts to lay the groundwork for potential sentence reductions. Alongside the work of scholars such as Maggie Dwyer, who has analyzed West and Central African mutinies as forms of tactical communication, and David Hopkin, who has considered desertion storytelling as a means of tacit bargaining in the French army, this chapter treats soldiers' desertions and returns not just as crimes and arrests, but as negotiations. Absentees and deserters in many cases competently engaged with military law, organized effective gestures of surrender, and navigated the risks created by a reward system that mobilized civilians and military personnel in their pursuit on the northern frontier.<sup>57</sup>

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<sup>57</sup> Maggie Dwyer, "Tactical Communication: Mutiny as a Dialogue in West and Central Africa," *Africa Spectrum*, 50, 1, (2015), 5-23; David M. Hopkin, David Hopkin, "Storytelling, Fairytales and Autobiography: Observations on Eighteenth and Nineteenth-Century French Soldiers' and Sailors' Memoirs," *Social History* 29:2 (2004): 197; David Hopkin, 'La Ramée, the archetypal soldier, as an indicator of popular attitudes to the army in nineteenth-century France', *French History*, XIV (2000), 115–49.

## Chapter Six

### Desertion in Popular Culture: Suffering Women, Sympathetic Soldiers, and Nationalistic Celebration

A satirical British tale appeared in an American literary journal in the 1830s, poking fun at the tendency to romanticize ordinary desertions into sentimental melodramas. In this story, a comically caricatured and rambling old British officer held court at his company's mess table. He told the anecdote of a handsome, mysterious, and romantic young soldier who had once served under him. Recognizing the noble youth's superiority of manner, the officer felt he hardly belonged in the ranks and wondered what had driven him to enlist. The private let slip that "love...was the cause of all his misfortunes." A few weeks later, he deserted. Eventually, his officer encountered him again, now rich and happily married to an angelically beautiful woman. Their parents had forbidden their marriage, which calamity had led him to leave his father's business and enter the army. On receiving word that his beloved was pining and ill, he deserted to rejoin her and received her parent's deathbed blessing for their marriage. Before the officer could reveal how this desertion romance concluded, another soldier interrupted to expose the whole tale as imaginary. He remembered the deserter in question, "a lang, thin, good-for-nothing-like fellow" and a petty thief who had been flogged when found peddling alongside a poor woman on the road. Out of such poor materials the officer had spun his romance. The tale concluded with the original storyteller refusing to repent his poetic embellishments. Instead, he laughed and asked, "Well, gentlemen...all I have to say is, which of these stories do you like best?"<sup>1</sup>

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<sup>1</sup> "Tales and Miscellanies." *The Literary Journal, and Weekly Register of Science and the Arts* (Providence, RI) vol 1, no. 31 (Jan 4, 1834): 241. <http://search.proquest.com/docview/90002799?accountid=11752>; "AN OLD STORY

Stories of heroic and romantic deserters who were drawn away from the army out of loving concern for suffering women were well-liked throughout the first half of the nineteenth century. They were not the dominant narratives of the era's popular culture, but they still appeared across a variety of mediums including newspapers, magazines, theatre houses, novels, poems, and songs. Historians such as Nicole Eustace and Sarah Purcell have traced the more hegemonic depictions of martial patriotism that helped shape American nationalism in the early years of the republic. Purcell has noted the lionization of selected officer-class 'heroes' of the Revolutionary War and the yearly memorialization of significant battles as foundational aspects of nation-building in the United States. Eustace has analyzed the jingoistic literature, politics, and song of the 1812 era to argue that popular culture taught American men and women that by romantically loving and physically lusting after one another they were acting patriotically. Men fired with desire made the best fighters, and women contributed to their nation by increasing its population. The dominant themes of popular literature and song emphasized that patriotic and romantic interests and duties naturally coincided and reinforced one another. However, the popularity of sympathetic desertion romances alongside more mainstream war heroes and martial romances points to the persistence of counter-narratives that set personal relationships in dramatic conflict with the duties of military and national service.<sup>2</sup>

Desertion narratives introduced an important contrast into popular culture and the formation of American nationalism by focusing on military men who placed personal priorities above their patriotic duty. Contemporary fiction offered multiple perspectives on such men,

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TELLER." *The Corsair. A Gazette of Literature, Art, Dramatic Criticism, Fashion, and Novelty* (New York, NY) vol 1, no. 46 (Jan 25, 1840): 722. <http://search.proquest.com/docview/124713112?accountid=11752>.

<sup>2</sup> Nicole Eustace. *1812: War and the Passions of Patriotism* (Philadelphia: University of Pennsylvania Press, Inc., 2012); Sarah J. Purcell. *Sealed with Blood: War, Sacrifice, and Memory In Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2002); David Waldstreicher. *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1997).

some positive and some negative, some tragic and some happily resolved. Many fictional portrayals of desertion were sympathetic. Such narratives offered a field for critiquing the severe demands of martial discipline and for questioning the absolutism of patriotic principle. Not all sympathetic desertion narratives raised serious critiques of nationalistic values. Stories that balanced national honor with appropriate mercy could strengthen and romanticize audiences' conceptions of their country and its values. However, some desertion narratives did present more direct and potent critiques of army life and martial ideals, portraying the grisly horror of deserters' punishments and in some cases questioning the morality of war or even of the social compact itself. Desertion narratives raised implicit and explicit challenges to the formation of national pride around tales of military valor. By setting domestic ties and the poignancy of feminine distress in contrast with the severe demands of public duty, they complicated the emotional and moral implications of patriotism.

The chapter begins by examining the gendered implications of desertion romances. The light entertainments and comic operas of the late-eighteenth century were, in the nineteenth, surpassed in popularity by the melodrama, a formulaic genre that fit desertion narratives well on a structural level. Melodramas and sentimental literature tended to generate their plots and pathos out of the opposition of two opposing goods. Superhumanly virtuous heroes and heroines would be trapped between irreconcilable duties, agonizing over their inability to compromise without dishonoring themselves. In a typical melodramatic plot, a virtuous woman in love with a man whom her father disapproved would be torn between filial obedience and romantic fidelity, often while being simultaneously menaced by a villainous suitor. Desertion melodramas approached this basic formula from an alternate angle by forcing their male protagonists to choose between a different pair of goods: their patriotic duty and their domestic ties. There was

easy, built-in drama in presenting a good soldier with the call to a mother's deathbed, the helpless appeal of a despairing sweetheart, or the poverty of an aging parent. In melodramas, though the two opposing ideals that the plot introduced were both supposed to be admirable, there was usually a commonly acknowledged 'right' answer to the problem. A disapproving parent was not, outside of tragedies, allowed to trump true love. A soldier's military obligation was not, outside of tragedies, allowed to trump his loved ones' need for him.<sup>3</sup>

Desertion romances, by reorienting the melodrama's central conflict, could create opportunities to vary female roles and to acknowledge both feminine suffering and feminine agency. Instead of building up a central contrast between a woman's duty of obedience to her parent as opposed to the call of romance, desertion stories tended to put parents, siblings, sweethearts and wives together on one side of the scale and the strict demands of the army on the other. A soldier could desert for the sake of his mother as affectingly as for the sake of his beloved. In deserter stories, a woman with platonic or romantic ties to the hero frequently took on the role of an intercessor and saved her husband, sweetheart, or son's life by appealing to benevolent army or national authorities for his pardon. In tragedies that ended with the execution of sympathetic deserters, women served as collateral damage and their suffering could act as a critique of army severity. Other deserter narratives moved beyond the 'woman as intercessor' and 'woman as victim' tropes and allowed their heroines a broader spectrum of responses to the central moral conflict. These stories implicitly – and at times explicitly – asked what female patriotism should look like when placed at odds with a woman's familial or romantic feeling, and no single 'right' answer emerged.

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<sup>3</sup> David Grimsted. *Melodrama Unveiled; American Theater and Culture, 1800-1850* (Chicago: University of Chicago Press, 1968).

Casting an army deserter as the hero of a story might be seen as inherently subversive, but it was not always clear whether or not such entertainments functioned as critiques to mainstream idealizations of martial patriotism. In some cases they seemed rather to reinforce bombastic values. Desertion theatrical dramas were sometimes performed on battlefield victory anniversaries and national holidays, folding into the heart of public celebrations. The chapter presents a case study of French activist Louis-Sébastien Mercier's play *Le Déserteur*, originally a radical tragedy written to demand reforms in French army punishments. This play's movement through the process of transatlantic adaptation highlights the way that desertion dramas could be, and frequently were, softened to portray a happy reconciliation of the tensions between public duties and personal affections. When sympathetic deserters won pardon, it reassured audiences that their country would not demand too much of them and that army severity would not ultimately condemn decent men. This kind of desertion story allowed audiences to enjoy the thrill of witnessing the pomp of military executions that were safely called off at the last moment, engaging their sympathies without particularly challenging their values. Nevertheless, local commentaries on such performances suggest that audiences did at times recognize the ambiguities and conflicting values within these works.

The chapter then surveys the broad variety of deserter execution stories and performances of this era, ranging in style from tragedy to farce. From approximately the mid-1820s onward, evangelical and anti-war writers in the expanding periodical press dramatized or editorialized on deserter executions in order to mount stern and uncompromising critiques of war. Accounts of deserters suffering capital punishment – some graphically realistic, others poetic, and others pitched as moral lessons to children – became part of the arsenal through which they attacked cultural values that glorified and sanitized the image of the army. However, many other

entertainers turned the drama of facing execution into more romanticized or light-hearted fare, and even among evangelicals there was no consensus about whether deserters deserved pardon in this world or should instead focus on obtaining it in the next. The fascination of execution stretched across many sensibilities and viewpoints, creating an eclectic mixture of dying deserters in popular culture.

The transatlantic scope of the literature and theatre of this era carries this chapter beyond a tight focus on the borderland and toward the consideration of deserters as portrayed in wider popular culture, but the chapter concludes by returning to the border. It examines how those living on the U.S.-Canadian frontier drew on their local experiences to write desertion stories that were specific to their time and place. In addition to romance and local legend, the U.S.-Canadian frontier proved to be the source of one of the most uncompromising moral defenses of desertion to emerge from the popular culture of this era. The lived experience of international desertions and cross-border arrests among the inhabitants along the border, combined with the principles of evangelical pacifism, inspired the antebellum novella *William Vane*. Its deserter hero dared to define desertion from war, in all cases, as a positive good. The U.S.-Canadian frontier became the origin point of one of the desertion stories that most comprehensively rejected the dominant nationalistic values of patriotic war, and to differing degrees most desertion romances and tragedies of the era appealed to popular sympathies and asked citizens and subjects to imagine that decent men might have good reasons for leaving the army.

#### *Domestic Ties: Desertion in Love and War*

Desertion romances stressed that familial and heterosexual relationships affected, and were affected by, the demands of soldiery. It was commonly understood that lovers, wives, and



families could be deserted as well as armies. Desertion plays of the eighteenth century sometimes paralleled plots of romantic and military desertion. In 1769 Pierre-Alexandré Monsigny and Michel-Jean Sedaine collaborated in Paris to produce a comic-opera, *Le Déserteur*. It told the story of an honest soldier who, mistakenly believing that his fiancée had deserted him to marry another, falsely confessed to military desertion in a fit of despair. The play ended happily – the soldier’s fiancée was in truth faithful to him and interceded with the king to obtain his pardon – and it proved a great success with audiences. Charles Dibdin adapted it for the London stage. Both the French and English versions of the comic opera, along with ballet and grand pantomime versions, thereafter circulated the Atlantic and Europe and were performed in America and Canada long into the antebellum period. Its ballads were printed in American songsters, its overture adapted for pianofortes; its music moved beyond theaters and circuses into the parlors of individual homes. Sometimes dismissed as melodramatic fluff – it mounted no serious social critique and the ‘desertions’ it portrayed all boiled down to misunderstandings – it nonetheless highlighted parallels between the desertion of personal relationships and the desertion of the military, and it celebrated the martial leniency that could result from feminine intercession.<sup>4</sup>

Dibdin’s version of the piece, in particular, played with the overlapping rituals and vocabularies of romance and war. He inserted a song that emphasized the double meanings in the language of conquest: “One conduct’s for / Both love and war, / The point’s to gain

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<sup>4</sup> Pierre-Alexandre Monsigny and Michel-Jean Sedaine. *Le Déserteur :: Opéra-Comque En Trois Actes* (Paris: Chez L. Bathlot); Charles Dibdin, and Sedaine. *The Deserter; A New Musical Drama, As it Is Performed At the Theatre-Royal In Drury-Lane*. (London: Printed for T. Becket, near Surry Street, Strand, 1773); Library of Congress, Performing Arts Reading Room, Pierre-Alexandre Monsigny. “Overture, to the Deserter.” (Boston : Published and sold by G. Graupner at his music store, No. 6 Franklin Street, [1811?]), <https://lccn.loc.gov/2015562248>; George Taylor. *The French Revolution and the London Stage, 1789-1805* (Cambridge, MA: Cambridge University Press, 2004), 34-38; Susan L. Porter. *With an Air Debonair: Musical Theatre In America, 1785-1815* (Washington: Smithsonian Institution Press, 1991).

possession.” In all versions of the comic opera, a wedding procession in the first act – the inciting incident that illustrated the fiancée’s supposed desertion – was paralleled by a military procession toward execution in the final act that illustrated the hero’s supposed desertion. Dibdin, however, added an expanded scene to the libretto in between these two processions that capitalized on the idea that the language of betrayal in love could sound very similar to the language of betrayal in war. In the expanded scene, just after the wedding procession had passed, a party of soldiers on patrol for a deserter overheard the hero in the pangs of his disappointment. They heard him expressing shock at the idea that his love could “desert one so kind” and mistook his words for a confession that he himself had deserted his kind sovereign. Passages like these utilized the linguistic double entendre that the vocabulary of ‘desertion’ carried in French and English. In both languages the word had domestic and martial contexts that could be confused or interrelated.<sup>5</sup>

Desertion romances usually called on their heroines to act as intercessors on behalf of deserters. In Monsigny and Dibdin’s comic operas, all talk of desertion arose through misunderstandings that were resolved when a young woman’s plea secured mercy for her lover. Other deserter narratives further explored this theme, raising potential critiques of the severity of the army only to dismiss them by providing happy endings in the form of pardons. Women with either platonic or romantic love for the hero could play the intercessory role, and some popular stories included both types of relationship. A desertion short story that was sporadically reprinted in American periodicals from 1818 through the 1840s focused on these stock characters and relationships: the Lover, a young man who joined the British army to distract himself from a disappointed courtship; the Maid, the object of his affection; the Volunteer, a young man with

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<sup>5</sup> Chales Dibdin. *The Deserter: A Comic Opera* (Boston: Printed for William P Blake, 1795), 10, 17-18.

romanticized ideas about army life; and the Widow, his aged parent. The story quickly punctured any idealized images of a soldier's condition. "They had not been long in camp before the Volunteer had woeful proof of the wide difference between the ideal gentleman soldier which he had dressed up in his imagination, and the miserable, half-starved slave, the food for [gun]powder." The two young men, the Lover and the Volunteer, desert the army together and try to go home, but are captured, court-martialed, and condemned to die. It is decided that one will be pardoned, and they are told to cast lots. At that moment, "the shrieks of female sorrow" herald the arrival of the Maid and the Widow, who cling to their young men, each praying that their respective loved one will be the one to live.

Their emotional display opens the door to an exhibit of paternalistic mercy from the army's commander. "Soon after the women had rushed into the ring, an officer had run to the Duke's tent to inform him of the uncommon tenderness of the scene." Witnessing their distress, the Duke issues a pardon and reunites mother and son while blessing the nuptials of the romantic couple. The story concludes by explicitly addressing the underlying question of how to weigh the importance of domestic ties against martial glory. The Duke who pardoned the deserters "often declared he felt more pleasure from this action than from the battle of Culloden. He shed tears; but they were not those of Alexander when he wept for more worlds to conquer." Stories of military or national leaders pardoning deserters out of compassion toward related, suffering women affirmed a humane and gentlemanly vision of the army and its leaders that helped to counterbalance the harsher portrait of the unhappiness of military life that also emerged in such narratives.<sup>6</sup>

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<sup>6</sup> The American Periodical Database lists 11 printings of this short story between 1818 and 1844 under the title "The Deserters": *Philadelphia Magazine, and Weekly Repertory* (Philadelphia, PA) 1.12 (May 2, 1818): 93; *Weekly Visitor and Ladies' Museum* (New York, NY) 2.10 (Jul 4, 1818); *Masonic Mirror: and Mechanics' Intelligencer* (Boston, MA) 1.18 (Apr 23, 1825): 4; *The Ladies Garland* (Harpers Ferry, VA) vol 2, no. 17 (Jun 4, 1825): 67; *The*

However, in many stories and poems, pardon was not forthcoming, and such narratives could turn paternalistic norms into the basis of a stronger critique of the inhumanity of deserters' treatment by continuing to focus on the harmful collateral effects felt by innocent women. A British desertion poem, written in 1806 and circulating for years thereafter in both Britain and America, narrated the tragic story of a Spanish soldier, Cabeysa. He temporarily deserted the army in order to nurse his dying wife back to health. After she recovered, he tried to secretly return to his post, but was caught, condemned, and shot. His wife, arriving at the scene of execution, could not even recognize the features of his corpse. "He welters in his gore," his body mutilated by bullets. In the poem's conclusion she exclaimed, "His love for me the law defi'd / And for that love he fell! / When will the grave this form receive? / Prepare the mutual tomb." The final couplet portrayed her falling dead onto the corpse of Cabeysa.

The deaths of a faithful lover and his innocent wife leave the reader with a negative, tragic impression, yet the poem itself recognizes the complex ethics of martial law. The narrator explains that only stern laws forbidding soldiers to leave camp have prevented pillage and theft. "To pass the line, it was ordain'd, / Whoever should presume, / Shou'd a Deserter be arraign'd / And meet a Coward's doom: / This law by Equity approv'd, / And to the Peasants dear, / Soon to the brave Cabeysa prov'd / Destructively severe." In applying a generally just punishment to a soldier whose desertion was based on love rather than cowardice, the law became "destructively severe" and destroyed both man and wife. Desertion narratives with negative outcomes that were dramatized through the suffering of women challenged assumptions about whether there

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*Rural Repository Devoted to Polite Literature, Such as Moral and Sentimental Tales, Original Communications, Biography, Traveling Sketches, Poetry, Amusing Miscellany, Humorous and Historical Anecdotes* (Hudson, NY) 2.4 (Jul 23, 1825): 29; *Christian Watchman* (Boston, MA) 6.35 (Aug 5, 1825): 140; *Western Recorder* (Utica, NY) 2:68 (18 Oct 1825): 168; *The New-England Galaxy and United States Literary Advertiser* (Boston, MA) 16.836 (Oct 19, 1833): 1; *The Literary Journal, and Weekly Register of Science and the Arts* (Providence, RI) 1.35 (Feb 1, 1834): 275; *Rose of the Valley* (Cincinnati, OH) 1.3 (Mar 1, 1839): 65; *Evangelical Magazine and Gospel Advocate* (Utica, NY) 15.45 (Nov 8, 1844): 357.

was room for humane compromise in army policies, and implicitly reproached executioners who imagined they only punished guilty men but in fact struck at innocent women simultaneously.<sup>7</sup>

Perhaps the simplest and most direct iteration of this type of critique, which focused on female suffering and the parallel vocabularies of desertion in love and war, appeared in a Montreal magazine in 1833. A poem, entitled, “The Deserted, at the Execution of a Deserter,” described the “agony” of a young woman witnessing the death of her beloved soldier. The soldier himself met his punishment with “courage...so calm and true,” and far from having forfeited affectionate remembrance, the narrative asserts that his grave will be marked with tears of mourning. It is his sweetheart, the poem asserts, who is the true victim of his execution. “The warrior falls, and no one heeds / Her dismal shriek to save; / But she will sigh above his tomb, / And weep upon his grave. / And by her young and mournful look, / And by her low and moan, / The world will know that she is left – / Deserted and alone!”<sup>8</sup>

Desertion dramas that portrayed the collateral pain of affectionate women in order to critique martial punishments recurred throughout this time period, and a British-penned, American-performed play in 1855 used this technique to dramatize growing public distaste for flogging. “The British Slave” follows a sympathetic soldier who was dishonestly recruited into the British army, forced to abandon his wife and children, and abused by his superior officer. Repeatedly attempting to desert, he is flogged in an onstage tableau that would likely have shocked mid-century audiences with its display of a shirtless and blood-soaked actor. His long-

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<sup>7</sup> “The Deserter.” Edward Jerningham. *Poems and Plays* (London: Printed by Luke Hansard for Nornaville and Fell, 1806), LION Database, [http://gateway.proquest.com.proxy1.library.jhu.edu/openurl?ctx\\_ver=Z39.88-2003&xri:pqi:res\\_ver=0.2&res\\_id=xri:lion&rft\\_id=xri:lion:ft:po:Z200404950:2&rft.accountid=11752](http://gateway.proquest.com.proxy1.library.jhu.edu/openurl?ctx_ver=Z39.88-2003&xri:pqi:res_ver=0.2&res_id=xri:lion&rft_id=xri:lion:ft:po:Z200404950:2&rft.accountid=11752) (accessed 11/15/16); see also Early American Imprints, Series 2, no. 14975.

<sup>8</sup> Early Canadiana Online. *The Montreal Museum, or, Journal of Literature and Arts* (Montreal: Printed for the proprietor by L. Duvernay) vol. 1, no. 6 (May 1833): 388.

lost mother, hearing of his terrible circumstances, delivers a powerful monologue before dying of heartbreak.

Heartless miscreants, who uphold the horrors of the lash! Do ye not know, cowards that ye are, that the scourge which you cause to be wielded against the back of a man, full often rebounds on the heart of a woman? Do you never pause to reflect, that the murderous weapon which cuts deep into the palpitating flesh of the tied-up soldier, cuts as deeply into the bosom of a soldier's wife, his *mother*, and his children? Were're such men are to be found who tolerate this barbarism, I'd spurn them...then I'd pity their wives and children, for they are the most vile of domestic tyrants...

The speech suggests that cruelty to soldiers and cruelty to women are one and the same, and that a man capable of abusing a deserter in the barracks, not caring what affectionate female heart he wounds in the process, will be capable of abusing his own wife and children at home.<sup>9</sup>

While their shared melodramatic tropes made many desertion romances closely resemble one another, the very limitation of their structure prompted writers to add new twists and iterations onto basic mother-son or sweetheart-soldier scenarios. Some of their female characters diverged from the standard roles of intercessor or victim, particularly when authors allowed a heroine to have a sense of patriotism of her own that created complications in her relationship with a deserting son or lover. A woman who gave priority to remaining loyal to her country at the expense of a loved one might be portrayed sympathetically, villainously, or somewhere in between. A small but noticeable variety in portrayals of feminine patriotism can be observed emerging from these works, as writers questioned how a woman should prioritize her public and personal loyalties. They did not always reach the same conclusion.

Among the more sympathetic and complex melodramatic engagements with feminine patriotism was the American play “Widow’s Son, or Which is the Traitor,” performed in 1825 in

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<sup>9</sup> J. Burdett Howe. *The British Slave, or, Seven Years of a Soldier's Life: An Original Drama, in Four Acts* (Boston, MA: W.V. Spencer, 1856), 29.

New York. Set during the American Revolution, the heroine was a proud, brave, eccentric widow whose favorite son turned traitor to the American cause. He was given good reason for his defection – he was unjustly suspected of royalism and summarily beaten and tarred. In revenge, he deserted to the British and helped them capture the U.S. fort where he formerly enlisted. The patriotic widow responded by becoming a spy and message-carrier for George Washington, “to make some atonement for the treason of her son.” Though devoted to her country, she was also determined to protect her son’s life and she frustrated American plans to recapture him, going so far as to (non-fatally) shoot an American officer in his defense. Ultimately, he never returned to the American cause, but died in a duel with a British officer who had insulted his personal honor by suggesting that deserters could never be trusted. The widow’s response to this news was relief, for she knew he could never have returned to his country and she had hoped only that his reputation might somehow be salvaged. Since he died fighting a British officer, she considered that “He lies upon the bed of honour; he fell contending with Columbia’s foe. For what else have I toiled, and prayed these many months? Believe me, I am happy.” Though ever protective of her son, his death relieved the tension between her nationalistic and maternal feelings and she rejoiced in being able to interpret his loss patriotically. The playwright exhibits no discomfort with her mixed loyalties, presenting her as both an admirable mother and a Revolutionary heroine.<sup>10</sup>

Female characters who proved willing to renounce or sacrifice a beloved deserter out of a sense of higher devotion to their country were praised in some works and vilified in others. The short story “A Patriot Martyr” reverently applauded its Revolutionary-era heroine, who resolved that “were the warmest and dearest affections, the brightest prospects, the most

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<sup>10</sup> Samuel Woodworth, music by J.H. Swindells. *Widow’s Son, or, Which is the Traitor: A Melodrama, in Three Acts, as performed at the New-York Park Theatre* (New York: C.N. Baldwin, 1825), 81.

cherished hopes put into competition with my country's love, or opposed to her interests, I would trample them beneath my feet, though every fibre of my heart bled as I rent them away." She was forced to honor this pledge when the man she loved, a British officer, deserted his army and crossed behind American lines to appeal to her, telling her she must come away with him or allow him to be arrested and executed. She turned him over to American officers, and in a gender reversal of the usual trope it was her brother, less absolute in his patriotism, who interceded with General Washington and procured his release. She wasted away of a broken heart but died rapturously on hearing the Declaration of Independence proclaimed. An opposite attitude to the same basic dilemma characterized the anecdote of "The Unnatural Parent," in which a Russian mother turned over her deserting son to the police. The emperor presented her with a medal and a pension, while her son was flogged to death. In another variation, a Prussian mother, ashamed of her son for staining their town's patriotic reputation, slapped him across the face and sent him back to the army under a civic guard. This was not portrayed as a villainous action, but as an honest gesture of patriotism, and the magnanimous general rewarded it by turning a blind eye to the crime and restoring the grateful soldier to his regiment. Through these variations, desertion stories experimented with different ways that women might respond to a conflict of interest between their patriotic and maternal duties.<sup>11</sup>

Desertion melodramas came in a spectrum of tones, some happy and some tragic, and the degree to which any individual story raised questions about the proper balance of national and personal loyalties varied widely. This could be seen in the frequent utilization of female

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<sup>11</sup> "THE PATRIOT MARTYR." *Lady's Book* (New York, NY) Dec 1832: 266. <http://search.proquest.com/docview/126099934?accountid=11752>; "THE UNNATURAL PARENT." *American Masonic Register and Literary Companion* (Albany, NY) vol 1, no. 1, (Aug 31, 1839): 3. <http://search.proquest.com/docview/124430930?accountid=11752>; "BLUCHER AND THE YOUNG DESERTER." *The Ladies' Repository; a Monthly Periodical, Devoted to Literature, Art and Religion* (Cincinnati, OH and New York, NY) vol 19, (May 1859): 300. <http://search.proquest.com/docview/90414463?accountid=11752>.



characters either to resolve the threat and tension of conflicting values by their intercession, to increase the tension and tragedy by joining their suffering to that of deserters, or to exhibit their own love of country and its effect on their maternal or romantic lives. Since romantic and familial relationships were both valid options through which to dramatize the conflict between national and domestic ties, these functions in melodramatic plots were not always reserved for female characters. Nevertheless, writers most often deployed the women of their stories to decide the happiness, tragedy, or ambiguity of each piece. In the process, they often drew on shared paternalistic expectations, but occasionally experimented with less orthodox images of feminine patriotism. To better understand how desertion melodramas engaged with more mainstream patriotic celebrations of martial values, and the greater or lesser degrees to which they might attempt social critique, the following case study evaluates one of the most radical desertion dramas of the era as it passed through the diluting processes of adaptation.

*“The justice of my punishment”: Alternate versions of Mercier’s Le Déserteur*

Desertion melodramas, particularly tragedies, carried a strong potential to raise public indignation against military punishments that endangered sympathetic heroes. A French theatrical drama, Louis-Sébastien Mercier’s *Le Déserteur*, aimed to do just that. Written in 1770 and circulating the Atlantic in following decades, the play powerfully argued against capital punishment for deserters by dramatically arranging for a long-lost father to discover his son just in time to preside over his court martial. The son, a proud young man who had endured years of misery under the abusive authority of a cruel officer, had finally snapped and physically lashed out when the officer insulted his honor. The son had then deserted, fallen in love, and been recaptured. The father, bound by his duty as an officer to uphold martial law, is faced with the

prospect of ordering his own child's execution. Again emphasizing the painful conflict between martial duty and familial ties – in this case casting the father in the more traditionally feminine role of collateral victim – this play intentionally mounted a critique of contemporary French laws that permitted desertion, even in peacetime, to be punished with death.<sup>12</sup>

Mercier believed that “true men of letters are today the most useful and praiseworthy citizens; they spread the light of public education; they reveal the true principles of the public good....and advancing constantly under the banners of philosophy, they necessarily dictate to men of state and to kings the lessons that must spark public happiness.” Theater could be the instrument of activism, and as such should be “a useful pleasure, and not a distraction...far from serious and patriotic reflexions.” He used his play as a moral platform to viscerally shock his audience with the tragedy of execution. Despite the father's attempt to die alongside his son, the play concluded with the two being dragged apart and the son being shot dead. This ending was so objectionable to audiences that Mercier found himself under pressure to write a happy ending instead. When he declined to do so, theater producers altered the play without his permission.

Eventually, in response to a 1775 reform that softened punishments for desertion in the French army, Mercier obliged with a new ending in which the son received a last-minute pardon. But even this happier narrative retained hard-hitting passages. An old soldier recited a monologue about how horrible it was to be forced to kill comrades who had deserted due to real hardships that their superiors, who had never experienced enlisted life, did not understand. Mercier's critique was not absolute. In one dialogue he allowed the father to encourage his son to accept the justice of the law and to redeem himself as a soldier and citizen by heroically

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<sup>12</sup> Louis-Sébastien Mercier. *Le Déserteur: Drame, En Cinq Actes En Prose* (Paris: Le Jay, 1770).

embracing his death in the knowledge that it would deter others from deserting. But the overwhelmingly dominant theme of the play was the brutality of such extreme laws.<sup>13</sup>

The power of Mercier's original critique varied widely in its two English adaptations, because they represented altered versions of the text that took very different approaches to the prospect of criticizing military law. The first English adaptation came in 1783 just as the American Revolutionary War drew to a close. During wartime, the British actors who constituted the first professional theatre troupe in America had withdrawn to the Caribbean after the Continental Congress passed edicts against performing plays while the nation was in a state of crisis. Thus John Henry, an English actor, penned 'The Deserter, or A School for Soldiers' in Jamaica, and performed it to an audience largely composed of British soldiers. He made a series of pragmatic alterations. He changed the heroes' nationality from French to British. Reluctant to criticize military policy, he cut the monologue describing the horror of executing deserters. He deemphasized the idea that aristocratic officers regarded common soldiers with contempt. Henry allowed the theatrical action to follow the deserter to the field of his execution, dramatizing the procession and allowing the climactic despair of the father to occur onstage rather than being reported second-hand. Throughout its later run, the play's main attraction would be its elaborate staging of the rituals of execution, which fascinated the public. And in his greatest departure from the original script, Henry composed a new monologue for the deserter to deliver to his father and the assembled troops who were about to witness his death.<sup>14</sup>

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<sup>13</sup> Simon Davies' annotated introduction to Louis-Sebastian Mercier's *Le Déserteur* (Exeter: University of Exeter, 1974), v-xvii. Mercier as quoted in Davies' text, v-vi; Taylor, *French Revolution and the London Stage*, 36-38.

<sup>14</sup> John Henry and Louis-Sébastien Mercier. *A School for Soldiers, or, the Deserter A Dramatic Piece in Four Acts* (Kingston, Jamaica: Printed by Douglass and Aikman, 1783); Errol Hill, "The Emergence of a National Drama in the West Indies," *Caribbean Quarterly*, Vol. 18, No. 4 (Dec 1972), 9-40.

This monologue essentially overturned the principle of the original text's critique, lauding martial life rather than lamenting its abuses.

[B]y submitting to my fate, the law, which condemns me, is satisfied; hard as it is to leave a tender mother, a wife whom I doat on to distraction, and a father whose nobleness of soul does honour to his profession, and demands my utmost veneration and affection; yet, as there is no evading this tremendous sentence; you shall see me meet death like a soldier, and a man! .... My fellow soldiers! take this warning from a dying man! let no consideration tempt you to desert the service of your king! but remember that you are the champions of you[r] country; the honourable defenders of her freedom and laws, and at any time be ready to embrace death before dishonour: let each reflect that on his behaviour depends the happiness of ages yet to come. Acting thus, you will enjoy the highest title the world can boast, "a brave soldier," and stand upon record the bulwarks of British liberty; for my own part, with my latest breath, I pray for my king, and the prosperity of my country, acknowledge the justice of my punishment, and cheerfully submit to it.<sup>15</sup>

This speech, alongside the happy ending Henry borrowed from later adaptations of Mercier – the deserter was pardoned – undid the horror of the original play and directed audiences' attention not to the idea that the killing of deserters was fundamentally objectionable, but rather that benevolent British officers could be relied upon to recognize heroic honor and pardon offenders who deserved sympathy. Indeed, in another added passage, a formerly stern Colonel assures the deserter and his father that he would have shown mercy before if he had known their story, and gently chides, "be assured...generosity would act oftener, if she were oftener trusted." By having the deserter explicitly acknowledge the justice of his punishment and by having officers insist they could be trusted to judge when exceptions were merited, this adaptation fully undercut the idea that martial law itself required reform, which had been Mercier's original contention.<sup>16</sup>

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<sup>15</sup> Henry, *A School for Soldiers*, 1783 Jamaica edition, 86-87.

<sup>16</sup> *ibid*, 92; Taylor, *French Revolution and the London Stage*, 36.

The second English adaptation of Mercier's play, this one authored in London by Charles Kemble and renamed "Point of Honor," came closer to critiquing martial law itself, simply by adapting the original text more faithfully. It did adopt certain changes that softened the message, including the happy ending in which an officer's pardon saved the day. But it also restored the script's original anti-execution message, and the father once again proclaimed:

[H]owever necessary may *be* the example [of harsh punishment to stem the tide of desertion,] is it not terrible to turn the arms which oft have gained them victories, against the hearts of those who bore them? ...I am filled with horror at this bloody preparation; the bare mention of a deserter chills my very soul; think, then, how dreadful is the charge allotted me, to give the fatal signal for their deaths – to see their straining eyes fixed eagerly on mine, hoping a reprieve – oh! 'tis too horrible. – Their judges should, like me, have risen by length of service from the common ranks – like me, have felt the ills which private soldiers feel – then might the life of many a wretch be spared to fight his country's battles still, and call down blessings on them for their mercy.

Kemble also cut Mercier's original passage suggesting that death could be, for the deserter, the heroic redemptive act of a good citizen because it might deter others from deserting. His version of the play thus offered less potential justification for execution than even Mercier had provided.<sup>17</sup>

Both Henry's *School for Soldiers* and Kemble's *Point of Honor* proved popular in the United States, so much so that they were incorporated into the public patriotic celebrations that historians have long identified as central, though contested, enactments of American nationalism. They were performed on national holidays or dates of patriotic significance, including the 4<sup>th</sup> of July, Washington's birthday, the commemoration of Washington's death, Evacuation Day in New York (the anniversary of the British withdrawal at the end of the American Revolution),

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<sup>17</sup> Charles Kemble, *The Point of Honor, a Play in Three Acts, Taken from the French, as Performed at the New Theatre, Philadelphia* (Philadelphia, PA: Published by John Conrad, 1802), 21.

and election day. In some cases the action of the play was transposed to the American Revolution and the nationalities of the characters switched accordingly.<sup>18</sup>

The two plays' impact and popularity seemed to be based on their dramatic staging and emotional appeal. One writer described an 1812 performance on Evacuation Day in New York:

The play which succeeded was the celebrated '*Point of Honor*...and many were the sympathetic tears which silently applauded the performance. When the amiable and unfortunate Durmiel appeared on the stage as a convicted deserter led to the place of execution; when blind-folded he kneeled to meet his fate; and when the word to *fire* was given by his own father, who in the same instant threw himself before his son, to receive the fire and die with him, convulsive sobs could be distinctly heard in every direction. The command to *fire* was instantaneously succeeded by the word '*hold!*' thundered in the voice of an officer who rushed in with a reprieve, and with his sword struck up the levelled muskets before a trigger could be pressed. The effect on the audience was electrical, and just such as the reality of such a scene might be supposed to produce. The soft contagion ran through every bosom, and appeared in every eye, whether in gallery, pit, or boxes.

Another theatre critic remembered, years later, the quiet nuance and emotional impact of a particular actor's performance in *Point of Honor*. While playing the anguished father, "the manner in which...[he] used to place his hand in that of the condemned son, about to be shot as a deserter, was the most affecting *silent expression of feeling* I ever saw."<sup>19</sup>

Performances of the plays were connected to wider performative events that offered opportunities for audience members to participate in enactments of patriotism, many of which had a distinctly martial cast. The first American performance of Henry's *School for Soldiers*,

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<sup>18</sup> For announcements of holiday performances: *Federal Gazette & Baltimore Daily Advertiser* (Baltimore, MD) 3/2/1796, 3; *The Centinel of Liberty* (Washington DC) 7/12/1799, 2; *The American Citizen and General Advertiser* (New York, NY) 2/21/1801, 3; *The Daily Advertiser* (New York, NY) 11/26/1804, 3; *Providence Patriot*, (Providence RI) 7/1/1815, 3; *The Daily Atlas* (Boston, MA) 6/7/1841, 2. For a performance set during the American Revolution: *The Daily Advertiser* (New York, NY) 11/26/1804, 3.

<sup>19</sup> Early American Imprints, Series 2, no. 39861. Samuel Woodworth. *The Champions of Freedom, or, The Mysterious Chief* (New York: Charles N. Baldwin, 1816), vol 2, 50-51. Woodworth's work mixes fact and fiction, but the account of the theatre performance appears to be drawn from life; "THE THEATRE." *Spirit of the Times; A Chronicle of the Turf, Agriculture, Field Sports, Literature and the Stage* (New York, NY) Feb 06, 1858. 616, <http://search.proquest.com/docview/126117635?accountid=11752>.

which occurred in New York in 1788, ended with “a VIEW of the BATTERY in New-York, and the VESSELS passing and SALUTING,” and finally “The whole will conclude with the *Procession of the Thirteen States TO THE TEMPLE of LIBERTY.*” Almost from *School for Soldiers’* first appearance in the United States, some newspaper articles began to proudly assert that the play had been written by an American (in fact the original was French and both adaptations British). The prospect of military realism also excited audiences. “The military procession to the execution of the Deserter, as now performed in London, at the Royalty Theatre, to crowded houses...is the most striking solemnity that ever yet appeared on any stage, and will, no doubt, afford not only a pleasing but truly instructive amusement,” one newspaper reported. Performances in Charleston and New York utilized actual soldiers to perform the execution procession, complete with a regimental band and a coffin. The play was also assumed to have special relevance for soldiers. In Charleston, “after the military services of the day, the Theatre was visited by his excellency the commander in chief and the brigadier general, with their respective suites, and a numerous and respectable assemblage of the military and citizens. The play selected for their entertainment was *The Point of Honor*...which was performed with much spirit and impressive effect on the audience.”<sup>20</sup>

What role did these desertion narratives play in the process of patriotic celebration and nation-building? Is there any evidence that these plays complicated public constructions of patriotism, either by raising questions about the harshness of law or military life, or by focusing sympathy on men who deserted? The variant prologues and epilogues composed locally for particular performances of the two plays reveal the different morals audiences could draw from

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<sup>20</sup> *Independent Journal* (New York, NY) 4/23/1788, 3; *The Massachusetts Centinel* (Boston, MA) 6/20/1789, 110; *The Daily Advertiser* (New York, NY) 4/24/1788, 2; *The City Gazette & Daily Advertiser* (Charleston, SC) 2/22/1793, 3; *Federal Gazette & Baltimore Daily Advertiser* (Baltimore, MD) 3/2/1796, 3; *City Gazette and Commercial Daily Advertiser* (Charleston, SC) 6/5/1823, 2.

the desertion stories. They highlight the variety of ideals that always underlie the supposedly unifying cultural practices of nationalism.

The prologue to a New York performance of John Henry's *School for Soldiers*, composed by "a Gentleman of this City" in 1796, first celebrated America's freedom from the wars that were consuming Europe, and then directly addressed the military members of the audience. "To the Military: *Ah! long remov'd be the eventful day, / Which calls your valor to the martial fray, / May no fond Sire, his Son – no Son his Sire, / Deplore, the victim to your martial ire; / But your keen steel (no widow caus'd to weep) / Forever, peaceful, in the scabbard sleep!*" Those passages evinced an awareness that widows, fathers, and deserters themselves could become "victim[s] to...martial ire," framing the evils of war primarily in the resultant destruction of domestic ties. But the author was confident that no such harshness afflicted the American military. The prologue went on to accept the possibility that such sacrifices could become necessary and ultimately returned to a glorified view of America's history of war and the stern laws that virtuous soldiers would uphold in their country's just cause. "Yet should (as when in blinded passion lost, / Britannia pour'd her legions on our coast; Proud of her force – regardless of all right;) / Some hostile power, *provoke* the deadly fight: / *Again* our generous youth, untaught to yield, / Would claim the dangerous honours of the field; / *Again* with bosoms burning in the cause, / Rally round Freedom's Standard, and THE LAWS." John Henry's desertion drama, which affirmed the justice of martial law and celebrated the idea that military men could be generous and humane, was easily incorporated into martial celebrations of patriotism.<sup>21</sup>

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<sup>21</sup> *The Daily Advertiser* (New York, NY) 11/7/1796, 2.



In contrast, a prologue composed several years later for a Philadelphia performance of Kemble's *Point of Honor* clearly picked up on that adaptation's stronger critique of the laws that justified deserters' execution. "[S]till your hearts shall sympathizing share / The pious anguish of a Sire's despair / Who weeps, yet glories in a blameless Son, / By laws too rigid, not by guilt undone." A concluding epilogue expanded on the idea that there were contrasting moral standards for judging desertion, and that the same person could rationally condemn it as a crime while emotionally exulting in it for bringing a loved one home. "There is a point (he shows it in his play) / When rigid Justice gives to fondness way; / Crimes which a Father now abhors – approves – / Blames as a man, and as a parent loves." Popular desertion literature could complicate the construction of nationalistic and patriotic ideals, evoking sympathy for deserters and questioning how to evaluate their crime and the law that judged them. A variety of reactions and interpretations of desertion were open to audiences and readers.<sup>22</sup>

Theatre was a popular and geographically spreading medium for desertion stories in North America. Between 1784 and 1860, plays that were about deserters or that featured a deserter execution act appeared in at least 115 separate runs in the United States. At that time even a popular play's run rarely lasted more than a few days at a time, but some of the large theatres could draw audiences of several thousand people per night. In the eighteenth century, Dibdin's comic opera and John Henry's *School for Soldiers* were well represented in the theatrical hubs of New York, Philadelphia, and Charleston (the francophone population of Charleston might stage Monsigny's comic opera in French rather than using Dibdin's English adaptation). As the nineteenth century began, these plays were joined by Kemble's *Point of Honor* and a variety of other entertainments, some romantic and some comic. Rather than

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<sup>22</sup> Charles Kemble. *Point of Honor. A Play* (Philadelphia, PA: Bioren for Conrads, 1802), 5-6, 70.

remaining concentrated in the three major east coast theatre towns, performances gradually appeared in smaller cities like Providence, Norfolk, Boston, Washington, Augusta, and Baltimore. They also spread west to growing cities like New Orleans, Cleveland, and San Francisco. A Quebec City theatre playbill provided an English synopsis and French song lyrics to the bilingual audience at a performance of Monsigny's comic opera in 1855. Theatre had a broad reach and carried desertion stories to those portions of the population not literate enough to read the versions circulating in print.<sup>23</sup>

These desertion plays might seek to move or simply to entertain their audiences, and occasionally they raised questions about how to morally judge characters who did not put their country first. With their uniformly happy endings, they probably put to rest any tensions that they raised before their audiences left the theatres. They were enfolded into military and political fêtes with little apparent sense of dissonance. More aggressive iterations of desertion narratives as forms of social critique would come with the increasing prominence of evangelical and secular anti-war writers and journals from approximately the mid-1820s onward, but their harsher attacks on accepted martial values formed only one strand in a much broader range of execution stories.

### *Variations on Execution*

Writers with anti-war sentiments could turn deserter execution stories into emotionally powerful and socking exposés about army violence. Boston, with its strong Unitarian presence and expanding periodical press, seems to have played a central role in circulating these kinds of

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<sup>23</sup> I used the America's Historical Newspapers database to search theatrical ads in order to assemble the above information about U.S. performance numbers and locations. The Canadian playbill is held by Library Archives Canada. Pierre-Alexandre Monsigny. *Le deserteur*, music by Monsigny, rearranged by Adam. [Quebec], 1855.

desertion stories. In 1836, Boston's *Christian Watchman* journal carried a piece by an anonymous author claiming to be a former U.S. army officer. He described a deserter's execution. He offered an uncensored portrayal of the graphic killing to which he claimed to have been an eye-witness, because he felt that the general public had no idea what kind of atrocities went on in army camps. He suggested that this public indifference evaporated when "one illustrious by birth, or fortune, or character" became the victim of "the cruel severity of the laws." The public was ready to accept romantic deserter heroes. Yet he pointed out that the majority of those shot for desertion were "poor private soldier[s]" and thus ignored. The writer hoped to shake public indifference and in the process influence national policy. The deserter he saw executed had only wanted to visit his family; he died miserable and afraid. When a sergeant stepped up to deliver the traditional headshot to ensure that the man would not die slowly, he "held the muzzle of his musket near the head – so near that the cap took fire – and there the body lay upon the face – the head emitting the mingled fumes of burning cotton and burning hair. O war, dreadful even in thy tenderness – horrible even in thy compassion!"

The author's goal in relating this incident was to interrogate his readers about whether they thought seriously enough about the costs of war before they supported bellicose national policy. "Do the great mass of men, ever eager at the voice of their leaders to cause the standard of war to be upreared, know in reality WHAT War is? No – no." This author made use of the image of a dying deserter as anti-war propaganda. He deliberately de-sanitized the execution ritual that was so often presented as an exciting attraction in deserter romances. He wrote in a realistic style to present a pointed reproach of what he saw as class-biased public indifference.

He highlighted the plight of the enlisted men who suffered in wars that most national popular culture glorified.<sup>24</sup>

This practice of editorializing on executions and dramatizing the figures of condemned deserters recurred in anti-war writing. In response to the Mexican-American War, one writer adopted the narrative voice of a deserter sentenced to death. This deserter addressed himself to his distant brother, regretting the disgrace he would bring on the family name and explaining his motives for turning against the American conquest. "I was induced to volunteer by false pretences," he wrote, but found that instead of defending his fellow Americans he was expected to commit atrocities against Mexicans. He deserted to fight in defense of the Mexicans instead, and insisted that he stood by the morality of his decision. The duty to obey orders in wartime should not override the higher call of conscience, but he witnessed too often "conscience being stunned by drums and cannon, or dazzled and blinded by false glory." The barbaric conduct of the U.S. soldiers, officers, and president over the course of the war made this deserter's narrative defiant. "I glory in having refused to do her [America's] wicked and bloody work," he concluded in the last hours before his hanging. "I fling back upon her name the disgrace of my death." This fictionalized deserter's voice invited readers' sympathy and admiration, as would a deserter hero of melodrama, but the specificity and fierceness of the work's political dissent set this style of desertion narrative apart from the more entertainment-oriented romances.<sup>25</sup>

Evangelical and Christian literature at times directed cautionary lessons to children, arguing that if they truly thought about the execution of deserters, it might challenge the imaginary appeal the army held for them. *The New England Sunday School Union* published an

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<sup>24</sup> "EXECUTION OF A DESERTER." *Christian Watchman* (Boston, MA) vol. 17, no. 2 (Jan 08, 1836): 2. <http://search.proquest.com/docview/127196987?accountid=11752>.

<sup>25</sup> "LETTER FROM A DESERTER." *The Monthly Religious Magazine* (Boston, MA) vol. 5, no. 1 (01, 1848): 37. <http://search.proquest.com/docview/135906009?accountid=11752>.

illustrated excerpt entitled simply, “Shooting Deserters.” It portrayed two young boys who were at first eager to hear the details of a real execution. But the article went on to lay out a relatively graphic account of an army firing squad, presenting the terror and gore of it seriously. At the end, the two boys declared they wanted nothing to do with executions, and their father reminded them they would have no choice if they joined the army, because military law would demand their compliance. The article’s introduction read: “When boys hear the music of the band, run to see the soldiers, and wish that they were big enough to be dressed up so fine, and march off so proudly, they little think that they are liable not only to be killed by the enemies they go to fight against, but may be led into circumstances where they will be deliberately shot by their own companions.” Such stories constituted a Christian effort to pre-emptively guide young boys’ aspirations away from soldiering.<sup>26</sup>

Evangelical literature was heterogeneous, however, and it remained possible for Christian reformers to denounce particular aspects of martial pride as sinful without mounting a broader attack on war or expressing sympathy for desertion. *The Deserter* – written in 1836 but only published in America in 1846 – was a novel of the prolific British authoress Charlotte Elizabeth, who enjoyed for a brief period a very broad readership in the United States. Though Elizabeth was based in England and Ireland, she did have personal experiences of Canadian barracks life. She had been unhappily married to an Irish officer who brought her with him during his periods of service both in Ireland and in Nova Scotia. Eventually separating from her husband, she focused on topics of religious and social reform, earning an admiring transatlantic audience of fellow activists. The first American edition of her collected works was prefaced with an introduction by Harriet Beecher Stowe. *The Deserter* was one of her comparatively late works,

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<sup>26</sup> "SHOOTING DESERTERS." *The Youth's Companion* (Boston, MA) vol. 22, no. 20 (Sep 14, 1848): 77. <http://search.proquest.com/docview/127001268?accountid=11752>.

and framed its narrative as a spiritual gauntlet for its deeply flawed Irish protagonist. His descent into various kinds of sin, not to mention repeated desertion from the British army, eventually resulted in his execution. However, the novel reached what was – by its own standards – a hopeful conclusion, since the condemned man experienced a true Methodist conversion and died assured of his heavenly reception.<sup>27</sup>

The novel critiqued army life as one full of temptations for good Christians, but on the topic of desertion the authoress took a firmly punitive view on spiritual as well as patriotic grounds. Having sworn an oath to obey the legitimate authorities Providence had placed above him, a soldier could not desert without perjuring himself before God. Furthermore, her protagonists' motives for desertion were not described sympathetically. His pride led him to resent being punished for his real failures in military duty and discipline – though the method of his punishment, the lash, was editorially condemned as cruel. In Elizabeth's novel, the eponymous deserter's execution was ultimately justified. "Pardon extended to such a character, would seem to promise impunity to other offenders; and the reins of subordination so slackened, we should have an accumulation of crimes calling, at last, for a course of unwonted severity. Thus, mercy shown to an individual would become cruelty to many." This female author did not call for pardon for deserters nor did she create any intercessor figure to argue against the severity of military execution, as fictional female characters were often seen to do in desertion romances. Instead, Charlotte Elizabeth focused her reader's attention on the importance of surrendering pride and focusing on attaining salvation. In the process, her narrative denounced the affectations of a martial culture obsessed with honor. She also argued in favor of maintaining

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<sup>27</sup> Charlotte Elizabeth. *Personal Recollections* (Surrey: L. and G. Seeley, 1841); Ivanka Kovačević and S. Barbara Kanner, "Blue Book Into Novel: The Forgotten Industrial Fiction of Charlotte Elizabeth Tonna," *Nineteenth-Century Fiction*, Vol. 25, No. 2 (Sep 1970), 152-173; Charlotte Elizabeth. *The Deserter* (Dublin: Religious Tract and Book Society for Ireland, 1836).

military discipline and subjected her deserter protagonist to both exemplary justice and spiritual reprieve.<sup>28</sup>

Christian and anti-war writers were far from the only authors dramatizing deserter executions, and the styles at play in the wider field ran the gamut from grisly to sanitized, from farcical to serious, and from critical to accepting. An examination of the numerous perspectives from which it was possible to present the same basic events will illustrate the scope of interpretation open in desertion narratives. These narratives generally closely focused on the details of military ritual. Many short stories, poems, and songs focused solely on the process of execution, dwelling on the emotions and behaviors observed or imagined in the victim and in the witnesses.

Some accounts of executions were as shockingly graphic as the anti-war literature, but their writers could express approval or indifference to the execution itself. The carnage was simply related as a fact of life that could be accepted with greater or lesser degrees of ease and experience. One article recounted how a deserter was only wounded by the firing squad, and when he “sprang up, and with one of his jaws shattered and hanging down upon his breast, presented a horrid spectacle.” The army’s Provost Marshall in response “levelled a huge instrument (in size between a horse pistol and a blunderbuss) at his head, which blew it nearly off his shoulders...” Despite such extreme mutilation, the observer concluded that overall the practice of forcing recruits to watch such executions “is a good and wholesome practice, for nothing so much awakes in the mind of a soldier, endowed with proper feelings, the dishonor of committing an action which is almost certain to bring him to a disgraceful end, while it deters the bad man from doing that which will cost him all he has to lose – for such persons have no

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<sup>28</sup> Elizabeth, *Deserter*, 215.

character – in this life.” Believing that some common soldiers were capable of a sense of honor and others were not, the writer argued that the combination of shame and terror which execution encapsulated was one of the rare acts that could properly influence both good and bad soldiers to do their duty.<sup>29</sup>

The amount of gore in any particular rendition of a deserter’s end was not a reliable guide as to whether the writer sympathized with the deserter or objected to his killing. It was possible to present sympathetic but sanitized accounts of deserter executions, dwelling on emotional pain but romanticizing the release of death itself. Poems leant themselves to this approach. “His weeping wife and child were there, / All beautiful amidst despair - / Then blenched, methought, his manly cheek, / ....There, while in act of prayer he kneeled, / From trembling hands the death shot pealed; / and soft and calm he sank to rest, / As the babe upon its mother’s breast.” Here, the grief of woman and child remained “beautiful,” and death was likened to the peaceful sleep of innocence. Though the lyrics evoked the tragedy of the deserter’s death, they simultaneously romanticized it.<sup>30</sup>

Some deserter execution narratives focused strongly on the theme of dying well, and while judging desertion itself to be shameful, argued that deserters might be redeemed by facing death with either piety or masculine courage. A minister placed emphasis on whether a deserter had sincerely repented of his crimes and sins, and whether he was prepared to face death with serenity and forgive those who had condemned him. A secular ballad, on the other hand, focused on manly courage and self-control: “the deserter shrinks from the thought of death, But it is not a coward’s terror, No fain would he die in a well-fought field to blot out one fatal error.”

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<sup>29</sup> The Deserters." *The Ladies' Companion, a Monthly Magazine; Devoted to Literature and the Fine Arts* (New York, NY) vol. 2, no. 9 (01, 1835): 139. <http://search.proquest.com/docview/136944835?accountid=11752>.

<sup>30</sup> "THE DESERTER." *The Atheneum; Or, Spirit of the English Magazines* (Boston, MA) vol 5, no. 11 (Sep 01, 1826): 433. <http://search.proquest.com/docview/123984701?accountid=11752>.



A cover illustration for the ballad shows the handsome deserter, having removed his blindfold, facing his firing squad “with an aspect calm and steady” while he holds back a faithful dog with one hand to keep it out of the line of fire. On the sidelines his child extends his arms toward him. The song concludes with a question: “Shall the brand of dishonor gall the heart, That hath sigh’d for the wreath of glory, Shall his children blush for their father’s shame, when they hear the mournful story.” The deserter’s gallant posture in the ballad’s illustration implies that the children watching him will at least not be ashamed of the manner in which he faced death.<sup>31</sup>

The most farcical portrayals of deserters’ executions were directed at children. *The Little Deserter* was an illustrated children’s book showing a group of three brothers pretending to be soldiers. One didn’t enjoy the game and began to play by himself, so the others ambushed him and forced him through fake imprisonment, court martial, and execution. After the boy pretended to be shot while tied up and blindfolded, the oldest brother pompously pronounced: “‘Julius has received the just reward of desertion,’ said Frederick; ‘and as for you, my comrades, I trust you will so profit by his example, that none of you will ever experience the same fate.’” In an act designed to appeal to children, Donetti’s Dog and Monkey Troupe circulated through France and later the United States performing, among other things, “The Deserter.” It was a sketch in which a dog dressed in military uniform played dead after facing a firing squad of monkeys – one monkey, in a judge’s wig and costume, had presided at the court martial. The monkeys loaded the prone dog into a small coffin and solemnly drove him off-stage. Desertion

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<sup>31</sup> "THE DESERTER." *The Youth's Companion* (Boston, NY) vol. 18, no. 19 (Sep 12, 1844): 75. <http://search.proquest.com/docview/127024982?accountid=11752>; Thomas Haynes Bayly. “The Deserter, Written expressly for Miss Paton” (Baltimore: published by John Cole, [circa 1822-1839]).

stories and performances directed at youth seemed to assume that desertion could simply be folded into boys' war games for fun.<sup>32</sup>

Jokes about desertion also tended to try to make people laugh at military punishments. This was often attempted through punning and word play, which were particularly popular. A joke circulating in the 1780s related that "When Julius Caesar's army lay encamped at *Ticonderoga*...the deserters were commonly tied upon a battery ram and flogged: When any culprit was brought out, the commanding centurion would exclaim, '*Tie on the rogue!*' Another adapted the stock Irish joke character, casting him as a soldier who was obligated to carry out a sentence of flogging on another private. He obeyed the agonized prisoner's request to strike higher on his back (presumably to avoid being unable to sit afterwards), but "the man still continuing to roar out in agony, 'Devil burn your bellowing!' cried Paddy; 'there's no pleasing of you, strike where one will.'" One humorous story related how a braggart who pretended to military exploits that he never performed was arrested as a deserter in a fine comeuppance. Another had a prankster who had been mistaken for a deserter exclaim that, if he had been executed, "Wouldn't it have been a capital joke?" It seems likely that this kind of humor sought to defuse an underlying popular discomfort with military punishments.<sup>33</sup>

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<sup>32</sup> *The little deserter, or, Holiday sports: a tale dedicated to all good boys: embellished with engravings* (New-Haven: Published by J. Babcock & Son, 1824) 33-35. Earlier editions of the book were published in Edinburgh, Scotland; "PONETTI'S MONKEY TROUPE." *Gleason's Pictorial Drawing - Room Companion* (Boston, MA) 3, no. 3 (Jul 17, 1852): 33. <http://search.proquest.com/docview/124049233?accountid=11752>; "DOG AND MONKEY EXHIBITION IN NEW YORK CITY." *National Era* (Washington, DC) vol 4, no. 292 (Aug 05, 1852): 128. <http://search.proquest.com/docview/137543158?accountid=11752>.

<sup>33</sup> "LEVITY." *The Port - Folio* (Philadelphia, PA) vol. 4, no. 6 (Feb 11, 1804): 45. <http://search.proquest.com/docview/89464588?accountid=11752>; "Light Readings." *The Boston Weekly Magazine, Devoted to Polite Literature, Useful Science, Biography, and Dramatic Criticism* (Boston, MA) vol 1, no. 30 (Oct 09, 1824): 120. <http://search.proquest.com/docview/124008514?accountid=11752>; "Miscellaneous." *The Albion, A Journal of News, Politics and Literature* (New York, NY) vol. 5, no. 6 (Jul 22, 1826): 43. <http://search.proquest.com/docview/89485171?accountid=11752>; "ADVENTURES OF A MIDSUMMER TOURIST." *The American Monthly Magazine* (New York, NY) vol. 9 (Jan 1837): 13. <http://search.proquest.com/docview/89576260?accountid=11752>.

An execution story did not have to be grisly or graphic to raise ambiguities about civic ideals. One execution narrative, written in the voice of a disillusioned soldier of the American colonial era, got to the crux of the conflict between personal allegiances and public duties, unpacking the dilemma in both abstract and concrete terms. In the process, it showed how powerfully desertion could challenge an individual's self-identification with the nation both as a lived experience and as a set of principled beliefs. The anonymous author began by summarizing a theory of society similar to Rousseau's hypothetical social contract. For civilized man, "if he avails himself of the advantages conferred by social life, it is incumbent on him to conform with the regulations by which that society is kept together. We must all make some sacrifice for the public good." Beginning with this general principle, he goes on to relate how an encounter with desertion forced him to grapple with the terrible emotional consequences that society's abstract rules can sometimes impose. A dear friend of his, a Frenchman and fellow soldier who believed in nothing but free agency deserted from their wilderness fort in western Pennsylvania when conditions grew uncomfortable there. He was recaptured and condemned to death, surrounded by the trappings of sentimental romance, including a faithful dog to pine on his grave. He was easy in his mind about dying because he considered the world's unjust and unequal societies to be no great loss.<sup>34</sup>

The narrator was assigned to be on the firing squad, and under the stress of his grief at the idea of killing a friend, his faith in the social compact began to waver and his imagined participation in the civilized nation broke down.

I felt to the fullest extent the fact that we were in the midst of the wilderness. I gazed on my sorrow-stricken comrades until I almost fancied we were beings of another region, and when my eyes fell upon those destined to die, the execution

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<sup>34</sup> "THE CAMPAIGNER'S TALE." *The Philadelphia Monthly Magazine. Devoted to General Literature and the Fine Arts* (Philadelphia, PA) vol. 2, no. 1 (Apr 15, 1828): 3-13.  
<http://search.proquest.com/docview/137699548?accountid=11752>. Quotation from 3.

seemed to me even more terrible than deliberate and cold-blooded murder. The responsibility was appalling. It was the act of a few isolated beings, and not the act of the world. It was the slaying of a sharer in our dangers; one who was bound to us by every social tie; nay, by the indissoluble link of privation and misery. It struck me as being more horrible than fratricide.<sup>35</sup>

The narrator's friend meets his death with courage and apparent peace; the narrator deliberately shoots him through the heart as a last favor, to prevent unnecessary suffering. In contemplating his own behavior in comparison with his friend's, he comes to the conclusion that, in sacrificing his personal feelings for the sake of carrying out the martial law, he ruined himself. "The curse fell on me, and to this day I feel as if I were unabsolved....I did my duty as a soldier, but destroyed myself as a man." Intellectually, he still feels convinced that personal ties should be subordinate to public obligations, recognizing the authority of both "my country and my God." Nevertheless, the fact that his actions were technically morally correct gives him no comfort sufficient to overcome his emotional trauma. "How wonderfully and inexplicably is the mind of man organized! My friend died cheerfully, the victim of a departure from the line of duty, and I live in wretchedness for having fulfilled what my duty enjoined." This anecdote illustrates desertion narratives' potential to add a level of serious questioning to the process of identifying with national norms about patriotic duty. The character of the guilt-stricken executioner proved unable to imagine himself as acting within, or justified by, society.<sup>36</sup>

The specter of dramatic death characterized a wide range of popular accounts of deserters. Anti-war writers adopted styles of gory realism or religious sermonizing to mount much more direct attacks on the glorification of martial patriotism than did the melodramas of desertion romance. These writers' attempts to impress on readers the horror of execution had to compete, however, against the multitude of stories and performances that turned the spectacle of

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<sup>35</sup> *ibid*, 10.

<sup>36</sup> *ibid*, 12-13.

execution into an amusing light entertainment. While one narrative voice expressed the trauma of participating in a fellow soldier's killing, others provoked laughter with the mimicry or mockery of military punishment. However, one constant carried through depictions of desertion in popular culture: the act's defining feature was its potentially capital consequence. Imaginative scripts for desertion almost always climaxed in front of a firing squad. This ubiquitous invocation of executions did not fit the realities of peacetime soldiers' experiences, as it was rare for deserters to face death sentences outside of war. But through their life-and-death drama, execution fictions and commentaries excited audiences of different ages, values, and sympathies.

If desertion literature was generally characterized by its wide geographical circulation, its reliance on cross-cultural adaptations, and its execution-centered story-telling, it remained for storytellers on the U.S.-Canadian frontier to create stories that more closely reflected or connected to elements of their local lived experience. A handful of original writers and storytellers of the borderland inscribed desertion fiction and legend across their own backyards. In one such local production, the novella *William Vane*, an evangelical author combined familiar borderland elements of cross-border escape and apprehension with his pacifist principles to craft not only a dramatic desertion romance but an uncompromising moral refutation of martial patriotism.

#### *Desertion stories set on the U.S.-Canadian frontier*

In 1828 a writer for *The Novascotian* newspaper set a short desertion romance in the neighborhood of Halifax, inviting local readers to imagine their familiar experiences with British regiments and deserters through the lens of sentimental tropes. The story followed a well-worn formula. The hero was a "son of respectable parents," but poverty forced him to enlist. His childhood sweetheart decided to hire herself as an officer's servant so that she could follow his

regiment to North America. They sailed to Halifax, and the author drew on his readers' familiarity with local neighborhoods where officers rented homes and lived comfortably at a distance from enlisted men. "Upon landing here their separation was almost immediate, for the officer took quarters at the extreme end of Dutch Town, while Henry was stationed at the North Barrack. Unable to meet as they were wont, the lovers pined in absence." Henry snuck out of his quarters to visit his sweetheart, then feared to return and face punishment. They decided to run away together.

The author expected firm sympathy from his readers. He framed the desertion of the young soldier and his sweetheart as charming, describing it not as a shameful or even an ambiguous crime, but rather as "their perilous adventure." For inhabitants familiar with deserter pursuits, it would have come as no surprise that "For two days they kept beating about the woods...but at length hunger forced them from their retreat. They came out just at Nine Mile House, and scarcely had they reached the main road before they were recognized, and seized by a guard of soldiers." Both of them were initially jailed, but when the "ineffably sweet and modest" heroine confessed to the "fatherly" commanding officer that they had only deserted in order to be free to marry, "[t]he officer was so affected by her simple narrative, and by the purity and strength of their love," that he pardoned and promoted the deserter. The faithful couple then married. The writer concluded by saying that the officer's act of pardoning the lovers merited "a higher laurel than ever a gallant officer won in the field of battle."

A perfectly orthodox example of the desertion romance, this Nova Scotian article was unusual only insofar as it grafted its high-flown sentiment onto the everyday details of frontier garrison life. Most British, Canadian, and American readers did not encounter versions of these romances that were set immediately and specifically in their own place and time, particularly

outside of wartime. But this Canadian author believed that the daily experiences of his local audience would ensure that they quickly identified with the story's sympathies and themes. He did not need to embellish it with an execution threat that his audience might not find credible. He framed the story as one he had overheard in the neighborhood and believed to be true, rather than as a purely invented melodrama. "It gives to humble life a new charm," he suggested, "and shows, from the realities of the world, that the affections may spring up as strongly, burn as purely, and be ready to make for their object as romantic sacrifices under the cottage roof, as under the ample and gorgeous halls of fashion, and of pride." It called its readers to see themselves in the protagonists and to imagine the events not as a timeless romance but as a form of local inspiration.<sup>37</sup>

Oral folk culture was another medium through which a frontier desertion story could attach itself to a particular place. When Jeremiah Bigsby visited the remote British military post at Drummond's Island in Lake Huron during the mid-1820s, he heard a report that played on long-standing borderland fears of Native Americans as particularly fierce and violent in their pursuit of deserters. He heard that a group of Native Americans had recently headed off a small party of British deserters on the fort commander's orders, but had caused a shock when "in a couple of days [they] returned with the men's heads in a bag." The story, never confirmed, transmuted as it passed into local tradition. It persisted to the end of the century in the form of fishermen's folklore. In 1898, an American writing a history of the British occupation of Drummond Island related the version of the tale that had evolved into a local ghost story. "It was in midwinter, so the tradition runs," he reported, "that two soldiers of the King deserted

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<sup>37</sup> Halifax Novascotian. "SELECTED." *Emerald and Baltimore Literary Gazette* (Baltimore, MD) vol 1, no. 28 (Oct 25, 1828): 218. <http://search.proquest.com/docview/89778188?accountid=11752>; "THE YOUNG SOLDIER." (Aug 1, 1839). *Rose of the Valley* (Cincinnati, OH), vol 1, 180. Retrieved from <http://search.proquest.com/docview/137485700?accountid=11752>.

from the post at Drummond island.” The British commander offered a bounty for their heads, and the Native Americans ambushed the deserters as they sat by their campfire. “And ever since, unburied, they wander on those shores, seeking the heads which there they lost,” the legend concluded. “The intrepid fisherman who sails near by or ventures to land on the shore of the Great Manitoulin island after sunset, is appalled and his blood is curdled by the sight of two headless soldiers who walk to and fro, clad in the red coats and other regimentals of the early part of this century.”

Universalist minister S. W. Remington, living near Rochester, New York, on the shores of Lake Ontario, drew on the cross-border desertion experiences common to the borderland to write a radical challenge to patriotic martial values from the perspective of pacifism. His story was one of the few works that unambiguously cast desertion as a noble action, not due to extraordinary melodramatic circumstances, but across all circumstances. It carried furthest the critique of those aspects of nationalism based on martial glory, instead proposing an alternate version of patriotism based on good will toward all nations and the avoidance of any public service that conflicted with private conscience. It also specifically rejected the self-congratulatory interpretations of the War of 1812 that, by the time Remington was writing in the 1840s, were becoming building blocks of nationalism on both sides of the border.<sup>38</sup>

The main action of the story occurs along the U.S.-Canadian borderland during the war. The young protagonist, William Vane, had been raised by a principled but unorthodox father who “had studied the blood-stained and war-crimsoned history of his country,” – England – and regarded that history as nothing more than a series of “legalized and brutal murders.” As a

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<sup>38</sup> S.W. Remington. *William Vane; or The Young Deserter. A Moral Tale* (Rochester, NY: William Heughes, 1847). For its one extant review, “WILLIAM VANE;” *Evangelical Magazine and Gospel Advocate* (Utica, NY) vol. 18, no. 17 (Apr 23, 1847): 135. <http://search.proquest.com/docview/89847737?accountid=11752>.



result, the senior Vane “could but abhor the idea of taking any part either in the religious or political institutions of his country,” and in the face of social persecution chose to remove to West Canada (modern-day Ontario) with his family. Once William became head of the family after his father’s death, he shared his parent’s unashamed preference for domestic rather than civic life; “he loved the social circle, and the scenes of private life...[which were] more dear to him than all the world besides.”<sup>39</sup>

Upon the outbreak of war he was called to service, and almost immediately on his arrival in the army camp he began to be overwhelmed with pangs of conscience. He explicitly deconstructed the morality of nationalistic claims in a military context.

However sacred men may consider national honor, (and indeed it can not be held too sacred,) or however just may be the claims of one nation upon another, or intriguing and treacherous may be the conduct of one government towards another; it would seem, that some better, more mild, and merciful means should be employed to settle difficulties pending between two powerful nations, than to array thousands of peaceable citizens, in hostile and deadly combat.

William’s perspective also reflected many of the gendered, paternalistic constructions that appeared in the kind of desertion narratives that focused on female suffering. He was particularly sensitive to the plight of women and children, and the way that soldiers’ deaths would leave them deserted. “How many wives have been left destitute widows! how many children orphanized!” He had no wish to cause such suffering “by destroying fathers on the field of battle.” Instead, “[t]he extent of his ambition was to enjoy the company of his sisters, and throw around them that protection which young and unsuspecting females need, in a world of deception and folly.”<sup>40</sup>

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<sup>39</sup> *ibid*, 4, 30.

<sup>40</sup> *ibid*, 29.

Furthermore, his love for his adopted country, Canada, did not prompt him to vilify its political opponent, the United States. He adopted a less combative view of patriotism. Rather, “as for the government of the United States, he believed it to be the best and the most liberal of any other. And since he owed the people of the States no ill-will, he could not see why he should take up arms against them.” In William’s moment of decision, it was the influence of his parents, the memory of their affection and their non-violent principles that “all rose up before William in silent, though solemn condemnation of war. From this moment he resolved to desert the army.”<sup>41</sup>

Though the influence of his domestic loyalties inspired William’s desertion, his motives were significantly different than those of deserters portrayed in other narratives who left the army in order to be with their lovers or parents. William had to sacrifice the chance to return to his sisters. As a deserter, he would not be safe in Canada, so with the guidance of a Native American Seneca who knew his way around the territory on both sides of the border, William successfully evaded capture and crossed into the United States. He was forced to remain separated from his loved ones for the duration of the war. Thus his desertion did not spare him from the necessity of subordinating his personal affections for the sake of a higher call, but for him that call came not from the nation, but from his conscience and his God. He viewed his desertion as a moral obligation.

In a nod to the borderland’s history of conflicts over cross-border abduction, Remington villified William’s American employers, who kidnapped him back across the international line. After William had worked on their family farm in the American Northwest for several years and made plans to move on, they lured him into a boat and ferried him back to Canada in order to get

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<sup>41</sup> *ibid*, 30.

the reward money for apprehending a deserter. William reproached them with a mixed appeal to their religious, domestic, and national values, all of which he believed should prompt them to treat him humanely.

In the presence of that unerring Judge, who will not allow you to escape from that infamy which ever awaits the guilty, I pour forth my solemn adjuration to you as a father, if ye have a father's heart to feel; and to you as brother, if ye are worthy of that endearing appellation; and as Americans, if ye would not disgrace the spotless fame of your ancestors—to set me upon that shore of freedom from which ye so artfully beguiled me.

They ignored his plea, and after William warned them that divine vengeance would punish them, they turned him in on the Canadian shore.<sup>42</sup>

Remington's narrative portrayed the borderland community uniting in disavowing these American kidnappers. A black servant or slave was the first to speak against them. The family's "faithful negro," having witnessed from the shore line the sale of Vane's freedom for reward money and perhaps feeling a sense of solidarity with the recaptured deserter, reported the Americans' shameful conduct to all their neighbors. They were afterwards robbed, shunned by society, and destroyed as a family – left to "quail under public indignation. Their house was deserted by their old friends, and they left to brood over their crime, despised and outcast victims of their own folly."<sup>43</sup> Remington painted a recognizable picture of his borderland society as a community in which illegal violations of the border attracted censure and protest from local citizens. The narrative made it clear that both God and society's judgment condemned, not the deserter, but those who betrayed him. By acting inhumanely, even though technically justified by "the laws of nations," these men were portrayed as losing their membership in the nation itself. In the end, the mourning father was left a "poor, despised, miserable, forsaken, dreaded

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<sup>42</sup> *ibid*, 47.

<sup>43</sup> *ibid*, 50.

outcast, without confidence in God, in himself, or the society in which he lived.” William Vane, on the other hand, was quickly rewarded for his virtue. He obtained a pardon and returned to his family as the war ended.<sup>44</sup>

The *William Vane* novella drew on local values and experiences of borderland life to create the most positive presentation of desertion in antebellum popular literature, urging an alternate perspective on patriotism by suggesting that true nationalism cannot be built on faithful war service. Instead, the hero embraces an anti-war perspective and through his desertion demonstrates his moral courage and his good will toward all men. He acknowledges the traditional theme of the desertion romance by recognizing that fighting men on the battlefield inflict unacceptable suffering on the women and children dependent on them. The popular ideal of gaining masculine glory through service to the will of the nation is strongly qualified. When the nation adopts misguided policies, the hero’s duty is to evade those policies rather than contribute to them, and he defines martial exploits as misguided policies. In their place, the author Remington suggests a religiously and paternalistically inflected view of domestic duties and happiness as superior objects of male ambition.

The painful conflict between public and private duties formed the central theme of most desertion narratives. The message of Remington’s fictional work was that the pull of personal conscience and domestic affection should prove decisive and nationalistic martial claims must give way. *William Vane* illustrated how far sympathetic desertion narratives could go in challenging ideals of martial service and traditional heroism. As a frontier resident familiar with cross-border abductions, and a pacifist opposed to the promotion of nationalism through violence or coercion, Remington created a frontier desertion story both romantic and radical.

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<sup>44</sup> *ibid*, 47, 52.

## Conclusion

Popular tales of desertion often dramatized, in the form of romances or tragedies, the conflict between patriotic duty and personal male-female relationships. Some of these stories proved remarkably long-lived. Mid-twentieth-century folksong collectors in Newfoundland and Nova Scotia found local folksingers performing variants of what scholar George Malcolm Laws identified as an eighteenth- or nineteenth-century British broadside ballad depicting just such a contest of allegiance. The ballad followed the structure of a desertion romance. Its hero, Jimmy, left the army on the eve of a battle in order to attend his mother's deathbed. Barely had he embraced her before "an officer appeared; / He said, "You cowardly rascal who from the field did run, / You will be shot as a deserter when the battle it is won." This inhumane officer's uncompromising severity toward Jimmy hurt both of the women who loved him. Jimmy bemoaned that "my dearest mother...I'll see no more," while his sweetheart Mary became the object of the heartless officer's lust. "The officer that brought me here he swore away my life, / Thinking that he'd gain Mary after I'm dead and gone." In some versions the tragic ballad concludes as Jimmy is shot for desertion, but in Newfoundland a variant survived in which his wronged fiancée Mary revenged his death. "She fired and shot the officer, and he fell down by her side."<sup>45</sup>

This ballad, while remarkable in assigning to the wronged fiancée the satisfaction of vengeance, encapsulates many common themes in the desertion narratives of popular literature,

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<sup>45</sup> The ballad is sometimes titled "Young Jimmy and the Officer" and sometimes "When the Battle it Was Won." Elizabeth Bristol Greenleaf. *Ballads and Sea Songs of Newfoundland* (Cambridge, MA: Harvard University Press, 1933), 361-362; Kenneth Peacock. *Songs of the Newfoundland Outports* (Queen's Printer, 1965), vol. 3, 994-5; W. Roy Mackenzie, *Ballads and Songs from Nova Scotia* (Hatboro, PA: Folklore Associates, 1963) 297; George Malcolm Laws. *American balladry from British broadsides: a guide for students and collectors of traditional song*. (Philadelphia, PA: American Folklore Society, 1957), J 23, 139.

theater, and song that circulated Britain and Western Europe, Canada and the United States in the years before 1860. It establishes a sympathetic viewpoint towards the deserter, a young man of good character who, when faced with a fatal crisis in his family, understandably prioritizes his duty as a son to his duty as a soldier. It directly contrasts the claims of the nation with the claims of women and focuses attention on both female suffering and female agency. It portrays execution as the inevitable consequence of desertion; narratives of desertion throughout this period focused intently on the drama of facing death. And it evokes an image of war that, far from being sanitized or glorious, acknowledges that innocent – or at least pardonable – people can be crushed by oppressive martial discipline, with consequences that ripple outwards to impose death or despair on their intimate relations.

Through these themes, the ballad's sentimental narrative suggests there is an inhumanity inherent in requiring men to abandon vulnerable loved ones in order to defend the abstract nation. The narrative assumes that its protagonist's proper place was at his mother's bedside, not on the battlefield. Tragedy results from the conflict of commitments the soldier experienced, and yet the blame for that tragedy does not ultimately fall on the nation. Instead, a corrupt army officer, acting out of lust rather than patriotism, becomes the instrument of the deserter's execution. Fulfilling the role of melodramatic villain, the officer's death can be seen as resolving the central tension in the story by punishing the inhumane treatment of Jimmy in a way that condemns individual vice while side-stepping the larger question of whether the claims of the nation and the laws of the army were also blameworthy. However, through its sympathetic characterization of the deserter and the women hurt by his death – and its portrayal of the villainy rather than the justice of the deserter's punishment – the narrative implies that it is not

right for the nation or the army to require soldiers to place public above private allegiance in every case.

Desertion narratives dramatized the moral and emotional dilemmas that arose when the requirements of martial national duty came into conflict with the needs of family, love, or even conscience. The language of desertion had both domestic and military contexts; it was commonly understood that desertion could refer to the abandonment of an army or to the abandonment of a woman. Thus the language of desertion was used in sympathetic narratives to suggest that the suffering of women should be included in the martial calculus. If martial law was too stern in its demands for men to remain at their posts, and too severe in its punishments of men who prioritized family needs instead, women could be left deserted. Attention to paternalistic concerns with feminine vulnerability led to certain common themes in desertion romances. Women could be successful intercessors, gaining pardon for their soldiers and in the process contributing to a benevolent image of army officers or national leaders. Alternatively, narratives could portray women as the tragic collateral damage of unbending laws or unsympathetic officers. When deserters were shot, women also became victims. Some authors of desertion melodrama, in their efforts to wring new scenarios out of familiar tropes, characterized their female characters as torn between love of country and loyalty to a deserting man. Such stories examined variants of female patriotism without settling on one common conclusion about what it should look like. All of these stories either implicitly or explicitly challenged the notion, popularized in the dominant trends of nineteenth-century popular culture, that romantic and patriotic ties naturally supported each other rather than coming into opposition.

Louis-Sebastian Mercier's drama, *Le Déserteur*, its English adaptations, and its American performances illustrate how the level of critique a deserter narrative raised could vary

significantly. Both authors and audiences brought their own interpretations to the material, and conflicting images of merciful versus severe national authority continued to circulate. A deserter and his intimate relations could win audience sympathy, but that did not necessarily lead to a sense of dissonance with popular patriotic values. These plays might raise awareness that judging deserters was a difficult task. Or audiences might instead accept that the general policies that punished deserters were sound apart from the extraordinary, exceptional cases confined to heroic romance. There was room for both benevolent and troubling images of martial values to emerge from these plays, as different local glosses on the works acknowledged. The ambiguity of the plays' potential messages highlighted the breadth of differing opinion that remained possible even as audiences embraced the story as part of their celebratory calendar.

The rituals of military execution were central to whatever fascination deserter narratives exercised on their audiences, and dramatizations of the moment of death proliferated to widely different effect. These narratives provide a rich glimpse into the variety of opinion and emotion surrounding deserters in popular culture. Some of the most serious critiques of military harshness and national bellicosity emerged in these stories, yet the same fatal events could also inspire sentimental parlor songs or farcical children's shows aimed purely at entertainment. Most audiences would have encountered desertion stories in scattershot fashion, interspersed with other articles, performances, or songs. Sympathetic fictional portrayals or essays about deserters would have coexisted alongside news articles reporting on real incidents in war and advertisements rewarding capture. The popular culture of desertion was a culture of variety, and execution narratives illustrate the mixed messages in evidence.

Though occupying only one corner of a much broader transatlantic literature, a few inhabitants of the U.S.-Canadian frontier wrote desertion romance and tragedy into their own



local landscapes, drawing on their lived experiences to identify with desertion stories and in the process contributing the era's most exceptional defense of desertion as a moral value. While acknowledging the ambiguity inherent in any collection of desertion narratives, it is also important to recognize the strong challenges they could pose to mainstream patriotic ideals. Not all messages were mixed, and the pamphlet *William Vane* exemplifies the extent to which alternate values about war and nationalism could undermine the assumption that desertion was criminal or shameful. In this novel, desertion is shown to be an act of moral heroism. The painful conflict between public and private obligations is a central theme that runs throughout desertion narratives, and in the moral world of *William Vane*, standing by one's conscience and one's family takes precedence over any duty to submit to the national will when it misguidedly demands military service.

Desertion stories co-existed with and thrived within a popular culture that celebrated military exploits in the name of patriotism. Their message was often one of sympathy rather than shame. Though public duty remained the dominant language of patriotism, desertion narratives urged their audiences to imagine that military service ought not to impose too heavily on men whose sentimental attachments and personal moral judgments deserved humane consideration. These romances, tragedies, farces, and moral screeds placed deserters at the crossroads of popular militarism and anti-militarism. They successfully balanced there, enjoyed by a wide range of readers and audiences. A minority of those audiences and writers, through religious or ethical conviction, embraced execution dramas as stern social critiques. But the majority who engaged with these works probably did not go beyond sympathy into a critique of martial patriotism. But sympathy was not insignificant. In life as in melodrama, it was possible to value to irreconcilable ideals at once, and the dominant cultural understandings of male and

female patriotism co-existed with a strain of storytelling that drew on emotion and imagination to set national loyalties in opposition to more intimate relationships. Desertion romances and tragedies point to unsettled values surrounding men and women's approach to balancing familial and romantic loyalties with the demands of service to their governments and armies.

## Conclusion

As this study draws to a close, it is worthwhile to return to several of the individual deserters whose lives were profoundly affected by the borderland conflicts and negotiations that persisted from the late-eighteenth century through the first half of the nineteenth. These men's divergent successes and sufferings act as reminders that military and civilian responses to cross-border desertion remained unsettled. For soldiers on the British North American frontier, their near proximity to the international line offered relatively easy opportunities to leave their armies behind. However, crossing the border continued to carry risks. Illegal action might subject a deserter to abduction and punishment, even while legal, diplomatic, or political considerations might rally defenders to a deserter's cause.

In 1859, the Minnesota State Legislature welcomed a British deserter from Canada into their House of Representatives. Eight years before, this deserter – Stephen Walsh – had inspired a flurry of controversy when the British requested his extradition under the Ashburton Treaty. Americans had indignantly responded by insisting that his case was legally and morally equivalent to that of fugitive slaves. If the British wanted Americans to extradite deserters as thieves, those commenting on Walsh's case had alleged, then Canadian and Bahamian judiciaries would have to extradite the slaves harboring in British territory. Each side found concession impossible. Walsh was set at liberty, and he went on to achieve success in American civic life. By the end of the decade he was comfortably ensconced on the U.S.-Canadian border once again, this time in a position of legislative authority. His story is reminiscent of the

American prosperity narratives that added nationalistic subtexts to accounts of British deserters in the United States. For Walsh, the border had acted as a firm legal line of protection.<sup>1</sup>

Yet, even in the mid-nineteenth century, the border remained mutable, as British privates William Gurr and Edward Brock discovered to their cost. In 1850, the U.S. commanding officer at the isolated post of Sault Ste. Marie, Michigan, had issued written permission to a British officer in Canada West to come and arrest half a dozen deserters on American land. Gurr and Brock were among those kidnapped back across the border during this raid. At their courts martial in Canada, the prosecutorial witnesses were perfectly open about the extra-territorial nature of their arrests. No one suggested such apprehensions were problematic, and the illegality of their renditions did nothing to prevent their convictions. While some of their comrades with previous good character received sentences of two years' imprisonment in Canada, Gurr and Brock were condemned to ten years' transportation as felons. This meant they would be confined at hard labor in one of the empire's penal colonies. As a first step, they were shipped back to England and initially deposited in Millbank, then in Pentonville, and finally in Dartmoor prison. Here the process of their transportation – logistically complicated and expensive as it was – broke down. No one ever made arrangements for the next leg of their journey.

In a result perfectly contrary to the envisioned purpose of transportation, these Canadian deserters travelled from colony to metropole and served their sentences in the crowded prisons of England. Throughout the 1850s scores of other Canadian deserters ended up in the same situation. Gurr and Brock remained together throughout their movement through the British penal system, and they were both released early on good behavior at the end of 1854, having served less than half of their sentences. Gurr, though literate, declared himself a laborer rather

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<sup>1</sup> "A British Deserter An American Legislator." *Plain Dealer* (Cleveland, OH) 1/7/1859, 2. Walsh's extradition case was discussed in greater detail in Chapter Three.

than an artisan and announced his intention of heading to rural Heathfield on his release. Brock, illiterate, had family in North Staffordshire and planned to look for work alongside his father in the local potteries. Both of them were now free from the prison and the army, and they set out to re-enter civilian life. Both also still carried the “D” mark tattooed onto their left sides, an indelible reminder of their desertion experiences. For them, the British North American border had proved a weak and ineffective shield.<sup>2</sup>

The recovery and critical examination of international deserters’ histories not only enriches our understanding of enlisted men’s experiences; it shows that conflicting political, judicial, diplomatic, military, and popular responses to deserters powerfully influenced the irregular development of the U.S.-Canadian border. The history of international army desertion on the British North American frontier engages with the central paradox of borderland scholarship: the protean quality of international dividing lines that fluctuate between firmness and fluidity. Many borderland scholars consider that the strength of a border depends primarily on the local population’s degree of cultural and political divergence and the gradual formation of distinct national identities. Desertion conflicts show that attitudes toward controversial crimes can determine the strength of borders as well, even among populations that have firmly embraced principles of territorial sovereignty.

During this time period, common community values never reached consensus regarding deserters. Some borderland inhabitants eagerly participated in arresting deserters for the sake of monetary rewards, sometimes kidnapping them across the international line in the process.

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<sup>2</sup> The 1850 cross-border incident at Sault Ste. Marie that resulted in Gurr and Brock’s abduction was discussed in greater detail in Chapter Four. For their courts martial proceedings, see The National Archives, Kew, WO 71/339, Sept 5, 1850, Kingston, CW; for their prison records and personal details, see The National Archives, Kew, Records created or inherited by the Prison Commission and Home Office Prison Department, PCOM 3/21/2138 and PCOM 3/21/2139. This record series contains similar prisoner release records for many Canadian deserters sentenced to transportation from the late 1840s through the 1850s who ended up serving their time in England.

Others protected deserters and called on higher authorities to better enforce the border's protections. Though apprehensions never entirely stopped or regularized, respect for territorial rights and a current of public sympathy for fugitives trying to avoid army punishments often raised difficulties for those who tried to deny them asylum. Through both international diplomacy and local community action, the borderland extended widespread but at times unreliable protection to deserters.

This dissertation has considered various facets of the borderland desertion experience, and uncovered the variety of contexts in which deserters courted sympathy. Though never wholly successful in escaping accusations of disgrace or eliminating the risk of recapture, deserters made a place for themselves on the borderland. Literate deserters like Matthew Bunn and William Lighton sold the stories of their lives to American readers by characterizing themselves as the victims of British tyranny. Public support rallied around deserters accused of theft, like Stephen Walsh, as a counter-reaction to British and Canadian abolitionism. Deserters who became victims of illegal kidnappings tended to incite protests or mob action in their favor, though at the same time they faced active civil-military policing while on their own side of the line. When facing courts martial, deserters appealed to the sympathies of their officers by carefully maneuvering to prove their intentions and, in some cases, display their sensibility. And in popular culture, fictionalized deserter heroes dramatically facing death won public applause in both romances and tragedies. The creativity and success with which deserters negotiated for protection, clemency, and public sympathy across multiple fronts suggests that they deserve greater prominence in the social history of the military and in borderland history. Through them, ample room for ambiguity becomes visible within the popular patriotism of this era, and we can more intelligibly trace the border's irregular strength.

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*Noncommunicable Diseases in the Developing World* (Johns Hopkins University Press, 2014).

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“Occidental Civilization: Modern Europe,” Prof. Peter Jelavich (Spring 2012)

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Invited participant at ‘Commemoration 2007: Slavery, Anti-Slavery and the Road to Freedom’

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